

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



74-1002

ORIGINAL

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 74-1002

JOHN T. ROHE,

Petitioner-Appellant,

-against-

ROBERT F. FROEHLKE, SECRETARY OF THE  
ARMY, and COMMANDING GENERAL, FIRST  
UNITED STATES ARMY,

Respondent-Appellees.

On Appeal from the United States  
District Court for the Eastern  
District of New York

JOINT APPENDIX



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DOCKET ENTRIES

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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JOHN T. ROHE,

Petitioner-Appellant,

-against-

ROBERT F. FROEHLKE, SECRETARY  
OF THE ARMY, et ano.,

Respondents-Appellees.

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UNITED STATES DISTRICT  
COURT FOR THE EASTERN  
DISTRICT OF NEW YORK

Case No. 73 Civ. 887  
(T-3031)

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OPINION OF BARTELS, J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DEC 12 1973

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JOHN T. ROHE,

Petitioner,

FILED

-against-

73-C-887

ROBERT F. FROEHLKE, Secretary of  
the Army, and COMMANDING GENERAL,  
First United States Army,  
Ft. George Meade, Md.,

Respondents.  
-----x

## Appearances:

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Of Counsel

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Eastern District of New York  
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THOMAS A. ILLMENSEE, ESQ.  
Assistant U.S. Attorney  
Of Counsel

BARTELS, D.J.

Petitioner, John T. Rohe, applies for a preliminary  
and permanent injunction and a writ of mandamus directing the  
above respondents to cancel petitioner's order to active duty  
as an unsatisfactory reservist, and to cancel warrants out-

(17)



standing against him for failure to obey orders to active duty. On June 22, 1973, the Court stayed the removal of Rohe from the jurisdiction of the Eastern and Southern Districts of New York, released him from the physical custody of the respondents and returned him to duty as a New York City policeman until the determination of this action. No answer has been filed but, instead, the Government has moved for summary judgment pursuant to Rule 56(b), F.R.Civ.P., which Rohe opposes.

Rohe, a New York City policeman, enlisted in the New York Army National Guard on November 9, 1967, for a term of six years, and thereby became a member of the Army National Guard of the United States. On March 31, 1972, he was ordered to active duty for 19 months and 4 days, to begin April 17, 1972, for unsatisfactory participation in his Army Reserve Unit, consisting of failure to attend summer camp beginning June 26, 1971, to which he was commanded. He attempted to excuse his failure to appear upon the claim that he notified his unit prior to summer camp that he was ill; that he had a police department medical examination scheduled for June 28, 1971, and that he was on sick report from the police department on June 26, 1971, pursuant to

whose regulations he could not leave his residence. The diagnosis was gastroenteritis, i.e., inflammation of the stomach and intestines. Rohe was interviewed by the Battalion Surgeon on the last drill prior to summer camp, who informed him that he was not too sick to refuse to attend summer camp as required by AR 135-91(5,d.(3)), and that he would be fully examined at Camp Drum. The reason for this examination would be to determine if a medical discharge was warranted, considering Rohe's long record of excused absence from drills for illness. When Rohe's reserve unit was mustered for summer camp on June 26, 1971 and he failed to appear, the clerk of the reserve unit informed Rohe that he could only be excused on the ground of sickness if he were so excused by the Battalion Commander. The records of the police department indicate that Rohe reported on a weekend sick report at his precinct at 9:20 A.M. on June 26, 1971, was signed out at 10:15 A.M. and on June 27, 1971 was examined by a Police Surgeon and returned to full duty on the same day. On June 28, 1971, Rohe was notified by his commander that he was being carried on AWOL status and should report to the unit, but Rohe failed to report to his unit at summer camp and went from AWOL status to deserter.

status.

On September 15, 1971, Rohe was officially informed by letter that active duty orders had been requested from the unit commander; that he could file his appeal to the Appeal Board within fifteen days, and that his unit commander would explain the proper filing procedure if he so desired. On September 22, 1971, without seeking advice from his unit but with advice of Legal Aid police counsel, Rohe filed his appeal, which in nineteen paragraphs he attempted to explain his position that he was on sick report by the police department for June 26, 1971, and consequently had a valid reason for not proceeding to camp. Attached to such petition was a document with a notation by Dr. Leonard Fox, Police Surgeon, stating that the petitioner was confined to home for medical reasons on June 26th and 27th.<sup>1/</sup> However, Rohe did not mention in that petition that he had been ordered to report to his unit on June 28, 1971, nor the fact that according to the letter of the Commanding Officer of the Medical Section of the Police Department, the records of that Section indicated that he was returned to full police duty on June 27, 1971, nor the fact that at no time did he make an effort to communicate with his unit while it was at camp. Instead, he

stated in his letter of appeal, paragraph 11th: "On July 11 my unit returned from summer camp. By that time I had seen my police department surgeon and had been ordered back to duty."

On September 28, 1971, Assistant Adjutant General notified Rohe that his appeal had been received and would be forwarded to his Commanding Officer for comments and recommendations, and that upon receipt of the unit commander's recommendation, "this office will advise you concerning the status of your appeal." Captain DiTullio, the Unit Commander, recommended denial of Rohe's appeal, rejecting, as was his right, an alternative recommendation by the Inspector General that Rohe be permitted to fulfill his obligation by equivalent summer camp training with another unit. On October 21, 1971, the Adjutant General, as a part of the appellate procedure, required the Company Commander to respond to Rohe's allegations on a point-by-point basis.<sup>2/</sup> On January 15, 1972, the Company Commander made such a response to the Appeal Board, and in that connection the statements of Battalion Surgeon Petrillo and of First Sergeant Santagata, as well as the letter from the police department,

were submitted. In both of these statements Petrillo and Santagata claimed that Rohe admitted he was not sick at the time but was on vacation and that he had flushed a letter from the police department regarding his police medical examination down the toilet. The Appeal Board denied Rohe's claim and ordered him to active duty. It is from this decision that Rohe seeks redress, claiming that he had no knowledge of the Petrillo and Santagata statements which the Unit Commander had forwarded to the Appeal Board and inserted into the file, and consequently had no opportunity to refute them on appeal. Accordingly, petitioner claims that the appeal procedure did not conform to Army Regulation 135-91, ¶20, and to the requirements of due process inasmuch as he was not afforded a meaningful and effective appeal.

## II

Army Regulation 135-91(11) specifically provides that a member of the Army Ready Reserve who fails to participate satisfactorily to attend or complete annual training will be ordered to active duty for a period which, when added to his prior service for a full-time training duty, will total twenty-four months. Before requesting that such

a member be ordered to active duty, the unit commander must determine under Army Regulation 135-91(11)(b) "if the member was notified in sufficient time to comply, and whether or not emergency or cogent reasons existed for his absence."

Upon determination that these conditions have been satisfied, the commander must reduce to grade E-2 a member in grade E-3, and thereupon he must forward a request to the appropriate area commander that the member be ordered to active duty. Thereafter the unit commander must immediately notify the member of the action taken, and advise him that he will be required to enter active duty in or about thirty days after such notification.

A member who has been denied a requested delay of an order to active duty may appeal within fifteen days of the receipt of such denial. In such an appeal he is required to explain those facts pertinent to his case which he feels were not fully considered, and he may submit any additional evidence which he wishes to present. Paragraph 20,b, of the above regulations provides that appeals should be submitted through the unit commander, who in this case was Lt. DiTullio, to the commander having authority to approve discharges or delays, who in this case was the New York State Adjutant

General. Paragraph 20,c. provides that the State Adjutant General as approving authority may approve the delay. But when a denial of an appeal is "indicated" he must forward the appeal, records, and his recommendations to the United States Army Reserve Components Personnel and Administration Center at Fort Benjamin Harrison, Indiana. ¶20,c.(2)(a).

In accordance with ¶20,e. the commanding officer at Fort Benjamin Harrison must convene an appeal board which gives the commanding officer its recommendations. There is no requirement that the unit commander's recommendations or the State Adjutant General's recommendations, which are based on the unit commander's recommendations, be forwarded to the reservist who appeals. In AR 135-91(20,e.) it is specifically provided that in processing the appeal the provisions of AR 15-6 "will not be applicable to such proceedings."

AR 15-6, referring to the procedure to be utilized in investigations recommending adverse personnel action, specifically reads in part as follows:

" ... the individual who is the subject of the investigation will be provided an opportunity to review all relevant material in the file, subject to security standards and questions of privilege, including the major commander's proposed recommendation for

action to the Secretary. The individual will be permitted to rebut any adverse evidence and to submit any statement or relevant evidence that he desires."

Thus, the right to review all relevant material in the file and to rebut adverse evidence is by express implication specifically excluded under an appeal taken pursuant to AR 135-91(20,e). However, Army regulations do provide for access and review of personnel records by the individual concerned or his authorized representative, CFR §518.15(c), and further, that copies of Army records will be made available upon proper request if the record requested is described with sufficient particularity "to enable the Department of the Army to locate the record with a reasonable amount of effort." CFR §518.5(a).<sup>3/</sup>

### III

It appears to be well settled that courts will not attempt to review purely discretionary decisions of military officials within their jurisdiction (see Smith v. Resor, 406 F.2d 141 (2d Cir.1969)). They will, however, determine whether the military has complied with their own regulations in reaching such discretionary decisions. Hammond v.



Lenfest, 398 F.2d 705,710 (2d Cir.1968). Nevertheless, they have in this context consistently rejected the suggestion that they, in effect, rewrite the military's internal procedures in order to meet the claims of a particular individual. Only in extraordinary circumstances will they inject themselves into the internal operations of the military. O'Mara v. Zebrowski, 447 F.2d 1085 (3d Cir.1971). Accordingly, courts have held that the rights of a reservist involuntarily called to active duty for unexcused absences are adequately protected by a military regulation providing for a written appeal without a hearing. Ansted v. Resor, 437 F.2d 1020 (7th Cir.1971); Hagopian v. Knowlton, 470 F.2d 201,208 (2d Cir.1972).

Here, Rohe had full knowledge of the requirements which must be satisfied in order to be excused for sickness or for any other reason. Indeed, on February 4, 1969, he signed an orientation statement, which he acknowledged he understood and in which it was specifically stated:

"You are required to attend all periods of duty, unless specifically excused prior to the performance of such duty by your unit commander. Excuse from duty will be confined to exceptional cases only, such as sickness, injury, emergency or other circumstances

beyond your control. All such instances require substantiation by appropriate affidavits or certificates by a medical officer. Employment conflicts, overtime, schooling, and loss of income are not normally considered valid reasons for absence from training." (Emphasis added.)

The above paragraph tracks the language of AR 135-91 (9). It is not denied that Rohe did not substantiate his absence from summer camp "by appropriate affidavits or certificates by a medical officer" at any time. We find nothing in the regulations or elsewhere which requires that in an appeal from a reservist's involuntary call-up, the reservist is entitled to know not only what the charge is but also to require the Appeal Board to automatically furnish him with any statements or recommendations that might be inserted into the file by the unit commander. We find no basis for the charge that the military failed to comply with their own regulations in deciding petitioner's appeal.

The criterion in this type of case for a meaningful and effective appeal is whether petitioner had full knowledge of the charges against him and an opportunity to respond thereto. The essence of the charge against Rohe was that in spite of the recommendation to him by the Battalion Surgeon

after an interview on June 26, 1971, that he was not too sick to be excused from initial attendance at the summer camp, he nevertheless refused to proceed to camp. This was after he had failed to supply any affidavits from a medical doctor concerning his alleged illness. Statements which petitioner claims are false were made not only by the Battalion Surgeon but also by First Sergeant Joseph Santagata, who was also a sergeant on the police force.<sup>4/</sup> The letter from Charles K. Sibon, Captain, Commanding Officer, Medical Section of New York City Police to the Commanding Officer of petitioner's battalion, in referring to Rohe's sickness, specifically states, among other things:

"Records further indicate he reported to Week-End Sick Report at the Medical Section at 0920 hours and signed out at 1015 hours, June 27, 1971. He was examined by Police Surgeon, Dr. Leonard Fox, who returned him to full duty effective 0800 hours the same day, June 27, 1971 - diagnosis = Gastro-enteritis."

The Company Clerk, Frank S. Green, also forwarded a letter, dated October 21, 1971, to the Unit Commanding Officer stating that he had telephoned Rohe on June 26th and told him that he could not be carried as sick unless the battalion doctor examined him, to which Rohe replied "impossible" and

he was thereupon notified by Green that he would be carried as AWOL. The claim that the statements appearing in the appeal file made by the military personnel to the effect that Rohe admitted he was not sick were false, would under the circumstances appear to have little relevance because the fact seems to be established that Rohe was well enough to proceed to camp on June 27, 1971, and moreover, these allegedly false statements made no reference to Rohe's failure to report on June 28, 1971. Rohe knew why his active-duty orders were requested. He knew that the Unit Commander would make recommendations which could hardly be favorable to him, and he had sufficient prior notice of his remedy. Cf., United States ex rel. Sledjeski v. Commanding Officer, 478 F.2d 1147 (2d Cir.1973). Rohe's appeal, which was not supported by medical documentation and which was limited to failure to report on June 27th, failed to convince the Appeal Board that his claim was meritorious.

#### IV

Petitioner contends he has been deprived of procedural due process with respect to the appeal. We find that the procedures here employed in the context of the call-up

order complied with the requisites of due process. It is clear that procedural rules which fail to satisfy due process in one context, may satisfy procedural due process in another context. Bell v. Burson, 402 U.S. 535 (1971); Antonuk v. United States, 445 F.2d 592,594 (6th Cir.1971). To paraphrase the principle, due process must be tailored to the contextual background and the necessities of the situation. Thus, military personnel are not in a position to evoke the same range of rights enjoyed by civilians. O'Mara, supra. In dealing with enlisted reservists, like Rohe, we must keep in mind that they voluntarily subject themselves to the jurisdiction of the Army and accordingly are in a class distinct from inducted service men. Brown v. McNamara, 387 F.2d 150,152 (3d Cir.1967). When such reservists enlist, they are subject to orientation annually and are informed of the consequences of failure to participate satisfactorily in unit training assemblies. AR 135-91(13)(a). Rohe knew the requirements to be satisfied if he wished to be excused for sickness, and he also was aware of his right to appeal, which he exercised, fully explaining his position.

As we have previously observed, the military regulations do not require the Appeal Board to send to an enlisted

reservist papers that are placed in the file by his commander after the appeal has been filed. However, under the Army regulations such papers were available upon request. This should be sufficient to satisfy due process. By the statement in his appeal it was obvious that Rohe contended that he was sick and that he would deny the Petrillo and Santagata statements. Under the circumstances, it seems to us that admissions made to Petrillo and Santagata by Rohe, even if false, would have but a slight cumulative effect not sufficiently important to be harmful. At most, a credibility question was involved upon a relatively minor point. As stated in Antonuk v. United States, supra, at 598:

"The officers who reviewed the activation orders were faced with what was essentially a credibility question. Should they believe Captain Ott, who said that he had never received any medical documentation, and that appellant had admitted to him that he had not been in the doctor's office on one of the days when one of the notes placed him there? Or should they believe Antonuk, who claimed that he had filed the excuses? They apparently believed Captain Ott, and upheld his decision.

... This is just the kind of discretionary military determination we should not disturb."

Thus, we cannot find that the action of the Appeal Board was

arbitrary or capricious or lacking in due process. See Caruso v. Toothaker, 331 F.Supp. 294 (M.D.Pa.1971).

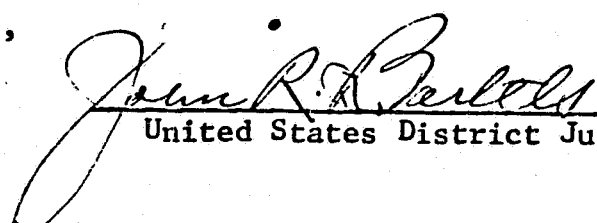
Petitioner cites as applicable to his case, Gonzales v. United States, 348 U.S. 407 (1955); Crotty v. Kelly, 443 F.2d 214 (1st Cir.1971); United States v. Purvis, 403 F.2d 555 (2d Cir.1968), and Violi v. Reese, 343 F.Supp. 462 (E.D.Pa.1972), which involve criminal prosecutions of pre-induction and in-service conscientious objectors under the Selective Service Act. In those cases the Army regulations require a hearing and provide for a right to file a statement before the Appeal Board predicated upon the facts in the file. Frequently those files contained adverse information which was heavily relied upon by the Local Draft Board and sometimes was the sole basis for its decision. The due process requirements in conscientious objector cases are obviously in a higher bracket than those applicable to cases involving enlisted reservists. We believe reliance upon these cases by the petitioner is misplaced.

Therefore, we conclude that the Army fully complied with its regulations pursuant to AR 135-91(16) and (20), and with the requirements of procedural due process applicable to the circumstances. Petitioner's request for a preliminary

and permanent injunction must be and hereby is denied. The Government's motion for summary judgment is granted.

SO ORDERED.

Dated: Brooklyn, N.Y.,  
December 10, 1973.

  
United States District Judge



FOOTNOTES

- 1/ Rohe claims that this document as well as the written suggestion of the Inspector General that Rohe be re-scheduled for another summer camp with another unit were not included in the Appeal Board file since they were not in the Court file. This claim seems to be frivolous because Rohe's letter of appeal included this document and also referred to the Inspector General's recommendation. Moreover, the Government has submitted certification by Colonel William B. Carne, Chief, Litigation Division, Office of the Judge Advocate General, that these documents were, in fact, in Rohe's Appeal Board file. The latter recommendation, pursuant to AR 135-91(9), is not binding upon the unit commander, and its rejection by him is not reviewable by this Court. Caruso v. Toothaker, 331 F.Supp. 294 (M.D.Pa.1971).
- 2/ Interim correspondence between October 21, 1971 and January 15, 1972, was as follows: On October 28, 1971, Rohe's unit transmitted to the Adjutant General's Office (AG) specific responses to the appeal letter which included Police Surgeon Leonard Fox's undated note, Rohe's letter to the Inspector General, Company Clerk Frank S. Green's statement of October 27, 1971, a letter from the Inspector General, and additional copies of statements taken from Sergeant Santagata and Battalion Surgeon Petrillo. On November 3, 1971, the AG requested further specific statements with respect to the involvement of the Inspector General, and police records, and on December 1, 1971, he requested further comments and information concerning the information from the New York Police Department and also concerning Rohe's attendance at meetings and summer camp. In reply thereto, the Company Commander forwarded the letter of January 15, 1972, which included a copy of the letter from the New York Police Department, among other things.

## FOOTNOTES - p. 2

3/ An affidavit was furnished to the Court by Major William M. Toohey, in which he swore that he served as the Recorder on the Involuntary Active Duty Appeal Board and had custody of the official records relating to such appeals during the time that Rohe's appeal was being processed and reviewed and further, had Rohe requested copies of documents in his military file, he would have provided Rohe with copies of such documents as might have been described by Rohe.

4/ A portion of the statement from the Police Sergeant reads as follows:

"When PV2 Rohe returned, I questioned him and asked to see the letter and asked him for the name of the Police Surgeon. I informed him that I was a sgt on the police force and that I would be able to check on his story with the police surgeon. Upon further questioning, PV2 Rohe told me that he was not on sick leave but on vacation; that he had an appointment at a clinic and not at a hospital and that when I asked to see the letter, he said that he had flushed it down the toilet bowl."

ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOHN T. ROHE,

Plaintiff,

-against-

73 Civ. No. 887

ORDER TO SHOW CAUSE

ROBERT F. FROEHLKE, SECRETARY OF THE  
ARMY, and COMMANDING GENERAL, FIRST  
UNITED STATES ARMY, FT. GEORGE MEADE,  
MD.,

Respondents.

Upon reading the petition herein, the affidavit of STEVEN J. HYMAN, sworn to the 18th day of June, 1973, and upon all the proceedings heretofore had herein, it is

ORDERED, that the respondents show cause before this Court at the United States District Court House, 225 Cadman Plaza East, Brooklyn, New York, at 2:00 o'clock in the afternoon, in Courtroom , on the 21<sup>st</sup> day of June, 1973, or as soon thereafter as counsel can be heard, why an order should not be issued granting petitioner a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining respondents from ordering petitioner to active duty in the United States Army and from otherwise retaining petitioner in custody of the United States Army on active duty status pending a determination by this Court on the merits of the petition, and for such other and further relief as this Court may deem just and proper, and it is

further

ORDERED, that pending the return date of this order to show cause and a hearing thereon, respondents, their agents, servants,<sup>and</sup> employees be and they hereby are restrained from enforcing or otherwise transporting petitioner from the jurisdiction of this court to report to active duty or otherwise to retain him in custody on an active duty status pending the return date of this order to show cause, and it is further

ORDERED, that service of a copy of this order, together with a copy of the papers upon which it is granted, upon the United States Attorney for the Eastern District of New York, on or before 6 o'clock in the afternoon on the 18<sup>th</sup> day of June, 1973, shall be deemed good and sufficient service.

SO ORDERED:

J. Owen Judge  
U.S.D.J.

Issued at: Brooklyn, New York  
June 18<sup>th</sup>, 1973

PETITION FOR WRIT OF MANDAMUS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

Petitioner, JOHN T. ROHE, by his attorneys, Kunstler Kunstler & Hyman, for his complaint and petition for a writ of mandamus and injunction, alleges as follows:

1. Petitioner is a citizen of the United States, State of New York, City of New York, County of Queens, and sues herein for a petition for a writ of mandamus and injunction against the respondents who are seeking to require petitioner to report for active duty as an unsatisfactory reservist. Petitioner is presently being held at the Armed Forces Military Police Station, Brooklyn Navy Yard, New York City, for his alleged failure to report for call-up to active duty.

2. Petitioner is presently and was at the time of his alleged call-up to active duty as an unsatisfactory participant, a member of the New York City Police Department where he holds the position of patrolman.

3. Respondent, ROBERT F. FROEHLKE, SECRETARY OF THE ARMY, has offices in Washington, D.C. and has under his control and supervision all members of the United States Army Reserve and members of the New York Army National Guard.

4. Respondent COMMANDING GENERAL, FIRST ARMY, is petitioner's superior commander under whose authority petitioner

was ordered to active duty as an unsatisfactory reservist from the New York Army National Guard.

5. Jurisdiction of this action arises pursuant to Title 18 U.S.C. 1331, 1332, 1361 and 1391. The matter in controversy exceeds the sum of \$10,000, exclusive of interest and costs in that if respondents are permitted to call petitioner to active duty illegally, he will suffer loss of employment and status as a member of the New York City Police Department and be required to serve on active duty for an excess of 18 months.

6. Petitioner enlisted in the New York Army National Guard and United States Army Reserve in or about November, 1967. Until his call-up to active duty, initiated in or about September 1971, petitioner was a satisfactory reservist performing all duties and obligations required of him.

7. That petitioner's call-up to active duty and his subsequent detention for alleged failure to report to active duty under Title 10, U.S.C. §673a as an unsatisfactory reservist, is illegal and contrary to applicable regulations and statutes and otherwise contrary to the law and fact.

8. That petitioner's call-up to active duty initiated in September 1971, was allegedly for failure of petitioner to report to summer camp in June, 1971.

9. That at the time of summer camp, petitioner was ill and he so advised the Department of the Army and, in fact, was seen by an Army Surgeon who confirmed petitioner's condition.

That further, petitioner was relieved of duty as a result of illness by the Police Department Surgeon and was advised, pursuant to the rules of the Police Department of the City of New York, that he could not leave his residence for any circumstance pending evaluation of his condition.

10. That due to petitioner's condition and the requirements of the Police Department of the City of New York, petitioner could not report for active duty on June 26th and so advised his Commanding Officer and requested that he be able to fulfill his obligation to two-week summer camp training at another date convenient to the Army. Notwithstanding that petitioner was ill, which illness was confirmed by Army doctors and the Police Surgeon, and notwithstanding the fact that petitioner, as a New York City patrolman, was confined to his home by orders of the Police Surgeon of the Police Department of the City of New York, petitioner's Commanding Officer refused to permit petitioner to serve with another unit on another date, and marked petitioner AWOL.

11. That thereafter, petitioner saw the Inspector General for the New York Army National Guard and explained his case to him, whereupon the Inspector General advised petitioner that he would seek to have petitioner rescheduled for summer camp. Thereafter, petitioner was advised that the Inspector General made such a request to petitioner's Commanding Officer, but petitioner's Commanding Officer arbitrarily and capriciously refused to permit petitioner to fulfill his obligation.

12. Thereafter, petitioner prosecuted an appeal which was apparently denied although petitioner never received formal notification of same.

13. That at all times petitioner has been ready, willing and able to perform his obligations but for his illness, confirmed by Army physicians and Police Department physicians, which prevented his reporting for summer camp training when his unit departed New York City. The actions by petitioner's immediate Commanding Officer, a Lt. Ditullio, of the First Bn. 71st Inf., Co. B., New York Army National Guard, was arbitrary, capricious and contrary to law and regulation.

14. That at no time was petitioner given a hearing or other incidence of due process of law or advised of the reason for the denial of his appeal.

15. That unless petitioner's request for a temporary restraining order and preliminary injunction is granted, he will be required to report to active duty and be subject to criminal penalties by way of court martial, notwithstanding that he should never have been ordered to active duty by the National Guard. Further, petitioner is presently in the custody of the Armed Forces Police, and unless a temporary restraining order is issued he will be removed from the jurisdiction and will otherwise suffer loss of employment as a patrolman due to the illegal acts of respondents herein.

16. Petitioner has no adequate remedy at law and has



exhausted his administrative remedies.

17. That no prior application has been made for the relief herein requested.

18. That as a result of the foregoing, petitioner requests that:

(a) a temporary restraining order issue staying respondents from transporting petitioner out of the jurisdiction of this Court, and for a further order staying his continued retention in the custody of the Armed Forces Police pending a determination of the preliminary injunction, and

(b) for a preliminary injunction enjoining respondents, pending a trial on the merits herein, from ordering petitioner to active duty and otherwise restraining respondents from placing petitioner in custody of the Armed Forces Police or other military personnel;

(c) for a permanent injunction and writ of mandamus ordering and directing the respondents to cancel petitioner's order to active duty and any warrants outstanding against him for alleged failure to report to active duty, and placing petitioner in the United States Army Reserve Control Group as required by law pending completion of petitioner's required service in the United States Army Reserve, and

(d) for such other and further relief as this

Court may deem proper.

**KUNSTLER KUNSTLER & HYMAN**  
Attorneys for Petitioner  
370 Lexington Avenue  
New York, New York 10017

By Steven J. Hyman  
A Member of the Firm

AFFIDAVIT OF STEVEN J. HYMAN  
IN SUPPORT OF PETITION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

STATE OF NEW YORK     )  
                              )  
COUNTY OF NEW YORK    ) SS.:

STEVEN J. HYMAN, being duly sworn, deposes and says:

I am a member of the firm of Kunstler Kunstler & Hyman, attorneys for the petitioner herein, and make this affidavit in support of a temporary restraining order and preliminary injunction sought by petitioner.

As the complaint indicates, petitioner was ordered to active duty for alleged unsatisfactory participation, which petitioner asserts is illegal, arbitrary and contrary to regulations and law.

That at all times petitioner's unsatisfactory participation in summer camp training was due to his illness, attested to by an Army physician and police surgeon, and which facts were known to petitioner's Commanding Officer at the time of the scheduled summer camp training.

That at all times petitioner was ready, willing and able to make up the summer camp training he missed as a result of his attested to medical illness, but petitioner's Commanding Officer refused to so permit petitioner to make up the summer camp.

That petitioner was unable to comply with the unreasonable and arbitrary directive of his Commanding Officer, when petitioner was ordered to remain confined to his home by a surgeon of the Police Department of the City of New York, due to a medical illness.

That petitioner now seeks relief from this Court in that he has been taken into custody by the Armed Forces Military Police as a result of the illegal and arbitrary order to active duty.

The petitioner has every likelihood of success in that a review of this case will reveal that petitioner should have been excused for the summer camp and allowed to make it up pursuant to Army Regulations, but for the arbitrary and capricious action of his Commanding Officer.

That annexed hereto is the letter of appeal written by petitioner objecting to call-up to active duty.

That unless this stay is granted, petitioner will be retained in custody and transported out of the jurisdiction without the opportunity to have a Court review the basis for the call to active duty when on its face said call-back to active duty appears to be arbitrary, capricious and unreasonable.

That petitioner was otherwise denied his procedural rights to due process of law, and as required by Army Regulations.

The reason that petitioner seeks an order to show cause is that a stay is necessary to prevent irreparable harm, and

Affidavit of Steven J. Hyman  
in Support of Petition

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petitioner seeks the resolution of this matter as soon as possible.

Unless petitioner is granted a stay, he will suffer loss of his job as a policeman in the Police Department of the City of New York, due to the illegal call-up to active duty.

No prior application has been made for the relief herein requested.

WHEREFORE, it is respectfully requested that the order to show cause be signed and that a temporary restraining order issue staying respondent from removing petitioner from the jurisdiction and from otherwise retaining petitioner in custody of the Armed Forces Military Police, pending the return date of this order to show cause, and for such other and further relief as this Court deems just in the premises.

---

STEVEN J. HYMAN

Sworn to before me this  
18th day of June 1973.

**AFFIDAVIT OF THOMAS A. ILLMENSEE  
IN OPPOSITION**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

[Same Title]

STATE OF NEW YORK    )  
                              :   ss.:  
COUNTY OF KINGS     )

I, Thomas A. Illmensee, being duly sworn, depose and say:

1. I am an Assistant United States Attorney on the staff of Robert A. Morse, United States Attorney for the Eastern District of New York, and I am in charge of the above entitled action on behalf of defendants. This affidavit is submitted in opposition to plaintiff's motion for a preliminary injunction restraining defendants from transporting plaintiff out of the Eastern District of New York, and restraining defendants from retaining plaintiff in their custody on an active duty status in the United States Army.

The complaint herein was filed on June 19, 1973 with the Clerk of the Court. On June 18, 1973, at about 6:00 P.M., the Honorable Orrin G. Judd signed a temporary restraining order prohibiting defendants from removing plaintiff from the Eastern District of New York. Your deponent has been unable to obtain copies of the relevant Army records that pertain to plaintiff's service as a member of the National Guard and his orders to active duty

in the United States Army by reason of his unsatisfactory participation in the Reserves, although your deponent has made numerous telephone calls to the office of the Staff Judge Advocate, Ft. Hamilton, New York, and to the office of the Judge Advocate General, Department of the Army, General Litigation Section, requesting that the records be obtained as speedily and expeditiously as possible. Your deponent was informed by an Army JAG officer that plaintiff's service records were located at Ft. Benjamin Harris, Indianapolis, Indiana, and were being flown to JAG Headquarters in Washington by special delivery air mail on April 19, 1973. Your deponent contacted JAG Headquarters at 3:30 P.M. on June 21, 1973, and was informed that the records had not yet arrived, and therefore had not been reviewed by an Army lawyer. It is submitted to the court that plaintiff's classification as an unsatisfactory participant in the Reserves was made by the National Guard, New York State, and that if the State of New York had been made a party to this action it could have supplied copies of plaintiff's service record to the court so as to effect a speedy determination of this case.

Based on telephone discussions with officers of the United States Army, Judge Advocate General Corps and based upon a reading of all the papers filed by plaintiff, it seems that the following can be deemed to be facts of

this case: Plaintiff failed to attend Reserve "summer camp" in June of 1971; because of the absence from "summer camp" it was determined by the National Guard that plaintiff was an unsatisfactory participant and therefore was subject to order to active duty; on October 8, 1971, plaintiff was in fact ordered to active duty and was required to so report on November 15, 1971; apparently the orders were amended at various times for reasons unknown to your deponent until

April 17, 1972 when the last amendment was made, and which still required plaintiff to appear for active duty.

Therefore, plaintiff has been certain for well over a year that there were outstanding orders requiring him to report to active duty and that he is guilty of laches by bringing on this motion for a preliminary injunction at a time when defendants are unable to provide the court with a copy of all relevant records and their legal contentions. In addition, the allegations in the complaint and other papers filed by plaintiff do not specify what procedural errors, if any, were committed by defendants. The only basis for the court's jurisdiction in this type of action is to determine whether or not plaintiff's procedural rights under applicable statutes and military regulations were violated. Smith v. Resor, 406 F. 2d 141 (2d Cir. 1969). It is clear that the court in this action may not review the exercise of discretion resulting in plaintiff's orders to active duty. Fox v. Brown, 402 F. 2d 837 (2d Cir. 1968), Cert. denied,



Affidavit of Thomas A. Illmensee  
in Opposition

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394 U.S. 938. Furthermore, it is submitted to the court that in view of the above limitations on the court's jurisdiction and in view of the plaintiff's failure to plead and invoke this court's habeas corpus powers, plaintiff's motion for a preliminary injunction ordering his release from the custody of the Army Police should be denied. The Government should not now be placed in a position of having to defend this action on the merits with only three full days notice, by reason of plaintiff's manifested intention to wait for his arrest as a deserter before seeking judicial review of the defendant's actions herein.

WHEREFORE, it is respectfully requested that plaintiff's motion for a preliminary injunction be denied in its entirety, and that the temporary restraining order signed by Judge Judd, on June 18, 1973 be dissolved.

*Thomas A. Illmensee*

Thomas A. Illmensee  
Assistant U.S. Attorney

Sworn to before me this

21<sup>st</sup> day of June, 1973.

*Henry A. Brachtel*

HENRY A. BRACHTEL  
Notary Public, State of New York  
No. 31-0320325  
Qualified in New York County  
Commission Expires March 30, 1975

NOTICE OF MOTION FOR SUMMARY JUDGMENTUNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

PLEASE TAKE NOTICE that upon the annexed memorandum of law, exhibits, Defendants' Statement pursuant to General Court Rule 9(g), and all other papers, heretofore filed herein, the federal defendants will move this court before the Honorable John R. Bartels, United States District Judge, Courtroom No. 4, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, at 9:30 o'clock in the forenoon of October 5, 1973, for an order pursuant to Rule 56(b) Fed. R. Civ. P., granting summary judgment for defendants' on the grounds that there is no genuine issue about any material fact, and that defendants are entitled to judgment as a matter of law, and for such other and further relief as to this court may seem just and proper.

Dated: Brooklyn, New York  
September 14, 1973

Yours, etc.

ROBERT A. MORSE  
United States Attorney  
Eastern District of New York  
Attorney for Defendants  
225 Cadman Plaza East  
Brooklyn, New York 11201By Thomas A. Illmensee  
Thomas A. Illmensee  
Assistant U.S. Attorney

TO:

Kunstler Kunstler & Hyman  
370 Lexington Avenue  
New York, N. Y. 10017

DEFENDANT'S 9G STATEMENT IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

Pursuant to General Court Rule 9(g), defendants incorporate herein Exhibits "A", and "C" annexed to the Notice of Motion as constituting the facts of this case as to which there is no genuine issue to be tried.

ROBERT A. MORSE  
United States Attorney  
Eastern District of New York  
Attorney for Defendants

By Thomas A. Illmensee  
Thomas A. Illmensee  
Assistant U.S. Attorney

TO:

Kunstler Kunstler & Hyman  
370 Lexington Avenue  
New York, N.Y. 10017

PETITIONER'S STATEMENT IN OPPOSITION  
TO MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

STATEMENT IN OPPOSITION  
PURSUANT TO RULE 9(g)

This statement is submitted in opposition to respondent's motion for summary judgment and statement required pursuant to Local Rule 9(g).

Petitioner asserts that the following facts and issues of this case are material, and in dispute:

1. That the appeal procedure followed by the New York Army National Guard deprived petitioner of an effective appeal under AR 135-91.

2. That prejudicial adverse information was added to petitioner's file after petitioner's Letter of Appeal was submitted, which adverse information was unknown to petitioner, and to which he could not respond.

3. That the additional information submitted by the National Guard officers after September 22, 1973 contained misstatements, errors and omissions, as more fully set forth in petitioner's affidavit dated October 12, 1973.

4. That the Appeal Board, in considering the information contained in petitioner's file relied on this adverse

evidence, and without such evidence would not have ordered petitioner to active duty.

5. That petitioner was denied the opportunity to rebut such information, and that the failure to permit him the opportunity to reply prejudiced his appeal of active duty orders.

Dated: New York, N.Y.  
October 12, 1973

KUNSTLER KUNSTLER & HYMAN  
Attorneys for Petitioner  
370 Madison Avenue  
New York, New York 10017

AFFIDAVIT OF JOHN T. ROHE  
IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

STATE OF NEW YORK     }  
COUNTY OF NEW YORK   }   SS.:

JOHN T. ROHE, being duly sworn, deposes and says:

1. I am the petitioner in the above action and I make this affidavit in opposition to respondents' motion for summary judgment, and in support of my motion for a preliminary injunction.

2. There are material issues of fact surrounding my call-up to active duty which are in dispute and as a matter of law, I was denied the effective and meaningful appeal guaranteed me under 420 AR 135-91, and due process of law.

3. At all times relevant herein, I was a member of the New York Army National Guard, Company B, First Battalion. I was and still am, a member in good standing of the New York City Police Department.

4. In or about September 1971, I was notified that my unit Commanding Officer had requested my call-up for involuntary active duty for a period of 18 months, due to my alleged unsatisfactory performance for not attending annual active <sup>training</sup> duty for

5. Thereafter, in or about September 22, 1971, pursuant to 420 AR 135-91, I filed a letter of appeal setting forth the facts surrounding my inability to report for active duty, which appeal is annexed hereto as Exhibit A.

6. It is evident from a review of my personnel file that at the time my appeal was filed there was insufficient evidence in the file to support the request that I be ordered to active duty. On three occasions, Col. James Kenney, New York Army National Guard, returned my file to my unit for additional letters specific information. Col. Kenney's letters are annexed as Exhibits B, C and D.

7. Thereafter, unknown to me until this time, certain documents and statements were forwarded by my unit to Headquarters National Guard to justify the initial request that orders issue. These statements contain errors of fact, omissions and are otherwise adverse and, had I been informed of their existence I would have rebutted them.

8. These documents, all submitted in support of the request that I be ordered to active duty for 18 months but not submitted until after I appealed that request, are as follows:

- a) Statement of First Sergeant Santagata, dated 13 Oct. 1971, annexed as Exhibit E;
- b) Statement of Lt. Petrillo, M.D., Battalion Surgeon, dated 13 Oct. 1971, annexed as Exhibit F;
- c) Statement of SP. Frank Green, dated 27 Oct. 1971, annexed as Exhibit G;
- d) Statement of Lt. DiTullio, annexed as Exhibit H;
- e) Supplemental Statement of Lt. DiTullio, annexed as Exhibit I;

f) Letter of Capt. Sebon, New York City Police Department, dated Jan 3, 1972, annexed as Exhibit J.

9. The submission of these statements, after I had appealed is highly prejudicial to me and makes the appeal that was afforded to me a meaningless one, in that adverse information was submitted after the appeal was filed which I was not given an opportunity to rebut.

10. Had I been afforded a meaningful appeal which gave me the opportunity to answer these statements, I would have submitted additional information showing that:

A. My unit was well aware of my poor physical condition and from in or about December 1970 on, Dr. Petrillo frequently excused me from drill meetings and sent me home due to my illness and high fevers;

B. I reported to my unit on or about June 22, 1971, for the last drill before summer camp duty scheduled for June 26, 1971, and met with Dr. Petrillo. I advised him that I was scheduled for a complete physical exam on June 28, 1971 at the Police Department Clinic, a service provided to officers a few times a year in a city hospital. In view of this appointment and my record of physical illness, Dr. Petrillo recommended that I be transferred to another unit to perform my active duty obligations at another time. This request was made to Sgt. Santagata, who refused to grant it. At no time did I ever state to Dr. Petrillo or Sgt. Santagata that I was on sick report or vacation at the



Police Department, or that I flushed my clinic appointment letter down the toilet;

C. I reported sick to the Police Department at 1:15 A.M. on June 26, 1971 and was instructed to remain at home pursuant to Department regulations. I was examined on June 27, 1971 by the Police Surgeon, and my condition was diagnosed as gastroenteritis\*. I was returned to the duty rolls for 8 P.M. June 27. I did not return to work until June 30, 1971. The statement of the Police Department that I was restored to duty as of 8 A.M. July 27, is apparently erroneous, since that precedes the time of my examination;

D. I telephoned my unit on the morning of June 26, 1971 to report my absence. I spoke with the company clerk, SP. Green and advised him that I was on sick report with the Police Department and Department regulations forbade my leaving my home. SP. Green then returned my call and told me I could not be excused;

E. In or about July 1971, I reported to my unit for the first scheduled drill after the summer camp period. My company commander, Lt. DiTullio, refused to take my excuse letter from the Police Department and informed me that I was no longer

\* FN 1 - Gastroenteritis is defined in Blackston's New Gould Medical Dictionary as "Inflammation of stomach and intestine." Symptomatically, gastroenteritis is more than just a "stomachache". See brief of respondents, page 4.

a member of the unit and that he had requested orders for my activation;

F. Thereafter, I met with Major Curran, the Inspector General, and advised him of my situation. He arranged for my transfer to another unit to perform my summer camp obligation, such transfer dependent upon the consent of Lt. DiTullio. Lt. DiTullio refused to consent, and Major Curran advised me to appeal the involuntary activation. Apparently, Major Curran made a report which is referred to in Lt. DeTullio's letter, (Exhibit I), but such report is not presently available to petitioner.

11. Had I been afforded an effective and meaningful appeal, the information set forth above would have been submitted to rebut the adverse statements placed in my file after I had appealed. The failure of the National Guard to inform me that additional adverse information was being placed in my file after I had submitted my appeal rendered my appeal meaningless and deprived me of an opportunity to rebut the charges that were considered by the Delay Appeal Board.

12. The failure to provide me with a meaningful appeal was highly prejudicial to me, and, in view of the fact that the Delay Appeal Board denied my appeal with one member dissenting (See Memorandum annexed as Exhibit K), the prejudice resulting from this meaningless appeal is patent.

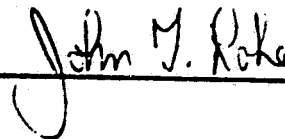
13. There is a dispute as to material issues of

Affidavit of John T. Rohe  
in Opposition to Motion

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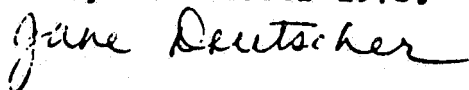
fact, and as a matter of law, I was denied my right to due process and effective appeal under §20 AR 135-91 by the National Guard's action in submitting adverse information in support of the request for involuntary active duty after my appeal was submitted, without giving me the opportunity to respond to it.

WHEREFORE, it is respectfully requested that respondents' motion for summary judgment be denied, and that petitioner's motion for a preliminary injunction, enjoining respondents from ordering petitioner to active duty be granted, and that petitioner's orders for active duty be canceled, or, in the alternative, that this matter be remanded for appropriate processing.



Sworn to Before me this

12th day of October 1973.



JANE DEUTSCHER  
Notary Public, State of New York  
No. 24-6005910  
Qualified in Kings County  
Commission Expires March 30, 1974

ANSWERUNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

Respondents by their attorney, Robert A. Morse, United States Attorney for the Eastern District of New York, Thomas A. Illmensee, Assistant United States Attorney, answering the petition herein upon information and belief, respectfully allege:

FIRST: Respondents admit paragraphs "3" and "4" of the petition.

SECOND: Respondents deny having knowledge or information sufficient to form a belief about paragraphs "2" and "17" of the petition.

THIRD: Respondents deny the allegations contained in paragraph "8" of the petition and respectfully refer the court to petitioner's appeal record heretofore filed herein as Exhibits "A" and "C" to respondents motion for summary judgment.

FOURTH: Respondents deny the allegations contained in paragraphs "1", "5", "6", "7", "9", "10", "11", "12", "13", "14", "15", "16" and "18" of the petition.

AS AND FOR AN AFFIRMATIVE DEFENSE

FIFTH: Petitioner's call-up as an unsatisfactory reservist was in accordance with applicable regulations and

statutes and was lawful.

WHEREFORE, respondents pray that the court enter judgment dismissing the action, together with costs and disbursements.

Dated: Brooklyn, New York

September 27, 1973

ROBERT A. MORSE  
United States Attorney  
Eastern District of New York  
Attorney for Federal Respondents

By



Thomas A. Illmensee  
Assistant U.S. Attorney

TO:

Kunstler Kunstler & Hyman  
370 Lexington Avenue  
New York, New York 10017

**AFFIDAVIT OF WILLIAM M. TOOHEY  
IN SUPPORT OF MOTION**

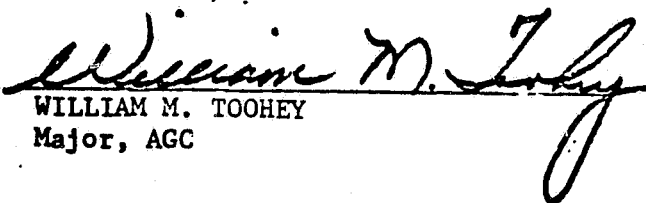
29 October 1973

I, William M. Toohey, do hereby swear that I am a commissioned officer in the Adjutant General's Corps, Army of the United States, with the rank of Major.

I hereby further swear that during 1972, I served as the Recorder on the Involuntary Active Duty Appeal Board which was convened at the United States Army Reserve Components Personnel and Administration Center, St. Louis, Missouri and that as part of my official duties I had custody of the official records relating to appeals submitted by military personnel who had been involuntarily ordered to active duty by reason of unsatisfactory participation pursuant to Army Regulation 135-91.

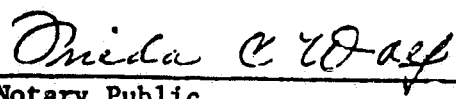
I further swear that I held the above-mentioned duties during the period of time in which the appeal of the order to involuntary active duty of Private John T. Rohe, 083-40-1028, was being processed and reviewed at the United States Army Reserve Components Personnel and Administration Center.

I further swear that had Private John T. Rohe requested copies of documents in his military file during the period of time in which his file was in my custody, pursuant to Army Regulation 345-20, I would have provided him with copies of such documents on the condition that he described the documents that he desired.

  
WILLIAM M. TOOHEY  
Major, AGC

STATE OF MISSOURI     )  
                              ) SS  
COUNTY OF ST. LOUIS )

Subscribed and sworn to before me this 29th day of October 1973, in Overland, Missouri.

  
\_\_\_\_\_  
Notary Public  
My commission expires: February 6, 1976

LETTER OF THOMAS ILLMENSEE  
TO HON. JOHN R. BARTELS

JDP:TAI:ig  
F. #730,658

November 21, 1973

Honorable John R. Bartels  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York

Re: John T. Rohe v. Robert F. Froehlke,  
Secretary of the Army, and Commanding  
General, First United States Army,  
Ft. George Meade, Md. - Civil Action  
No. 73 C 887

Dear Judge Bartels:

In response to your request of November 16, 1973, the following discussion is based upon the appeal record and is intended to supplement the two memoranda filed by the Government:

1. Rohe was advised by Adjutant General's office (AG) that his appeal had been received and had been forwarded to Rohe's commanding officer (Lt. Ditullio) for comments and recommendations. (Exh. A, 47)

2. Rohe's appeal letter was sent by the AG to Rohe's unit advising that Rohe had been informed of such transmittal (see 1., above).\*

3. By letter dated October 15, 1973, Rohe's unit transmitted to the AG statements taken from Sgt. Santagata and Lt. Petrillo, in response to 2. above. (Exh. A, 13)

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\*/This letter from the AG, the undated note of police surgeon Leonard Fox, Lt. Ditullio's letter to the New York Police Department dated December 14, 1971, and the Inspector General's letter dated July 16, 1971, were inadvertently omitted from the record filed with the court. All of the documents were in Rohe's 201 file and were considered by the appeal board. We have requested the Army to certify the documents and they will be filed with the court.

4. By letter dated October 21, 1973, the AG requested from Rohe's unit a more specific "point by point" rebuttal of Rohe's allegations. (Exh. A, 14)

5. By letter dated October 28, 1971, Rohe's unit transmitted to the AG specific responses to the appeal letter. This transmittal included Police Surgeon Leonard Fox's undated note, Rohe's "letter" to the Inspector General, Company Clerk Frank Green's statement of October 27, 1971, a letter from the Inspector General, and additional copies of the statements in 3. above. (Exh. A, 17-18)

6. By letter dated November 3, 1971 the AG requested further specific statements with respect to the involvement of the Inspector General and police records. (Exh. A, 21)

7. Rohe's unit replied to 6. above, by letter dated November 17, 1971.

8. By letter dated December 1, 1971 the AG requested further comments and information with respect to information from the New York Police Department, and about Rohe's attendance at meetings and summer camp. (Exh. A, 25)

9. The response to 8. above is set forth in a letter dated January 15, 1972 from Rohe's unit to the AG. (Exh. A, 28-29) This transmittal included a copy of a letter from the New York Police Department. (Exh. A, 9)

It should be noted that all of the above documents, comments and recommendations were obtained in order to permit the New York State Adjutant General to make his required recommendation pursuant to AR 135-91, §20 c.(2)(a).

The record further reveals that on June 28, 1971 (one day after Rohe was returned to the New York Police Department duty list) petitioner was again ordered to report to summer camp. (Exh. A, 33) Rohe never showed up at summer camp, or any date after his return to the duty rolls.

Very truly yours,

ROBERT A. MORSE  
United States Attorney

By Thomas A. Illmensee  
Assistant U.S. Attorney



LETTER OF STEVEN J. HYMAN  
TO HON. JOHN R. BARTELS

November 28, 1973

Honorable John R. Bartels  
U.S. District Judge  
Eastern District of  
New York  
225 Cadman Plaza East  
Brooklyn, N.Y.

Re: Rohe v. Froehlke  
73 Civ. 887

Dear Judge Bartels:

This letter is written in response to the letter directed to you by Mr. Illnensee, Assistant U.S. Attorney, dated November 21, 1973, supplementing the Government's memoranda.

Petitioner takes exception to certain of the facts stated and conclusions drawn by the Government in said letter. This letter will merely respond to those facts and will not deal with those points of law already treated by our memoranda. In particular, petitioner objects to the Government's assertion that all documents missing from petitioner's record filed with the court were considered by the appeal board. (See footnote to ¶2, page 1).

Petitioner's 201 file was disjointed; documents were removed, bound and certified to be the documents comprising the record considered by the appeal board. These were the documents originally filed with this court, which the Government concedes was an incomplete record. Even if Rohe's entire 201 file was before the appeal board, which fact petitioner disputes, its severed and disjointed nature makes it impossible to know if the appeal board in fact saw and considered the documents missing from the record which was subsequently certified to this court which were separate and apart somewhere in the 201 file. Presumably, if the appeal board in fact saw and considered all relevant documents which were excluded from the record certified to this court, they would not have inadvertently omitted them from that record.

Page 2

Honorable John R. Bartels

November 28, 1973

Nor does petitioner concede to the certification of these documents as having been part of the original record by the Army at this time. Even if the documents were in petitioner's 201 file, the important question remains whether or not this relevant documentation of petitioner's situation and appeal was in fact seen and considered by the appeal board which approved petitioner's activation orders.

The Government then sets forth the communications between the Adjutant General and Rohe's unit after the initial recommendations of Rohe's unit were forwarded to Headquarters. Thrice, after initial recommendation by petitioner's unit commander, by letters dated October 21, 1971, November 3, 1971 and December 1, 1971 the Adjutant General requested additional and more specific information from Rohe's unit to rebut petitioner's appeal. These requests for documents were not made, as the Government asserts, to permit the Adjutant General to make his required recommendation. Rather, these requests for additional documentation were made in order to conform to Army Regulations; so that petitioner's file would be a complete one which would support a determination by the appeal board to deny his appeal and would support the issuance of active duty orders under AR 135-91.

Very truly yours,

SJH:pm

Steven J. Hyman

cc: Thomas Illmensee, Esq.

AFFIDAVIT OF THOMAS A. ILLMENSEE  
IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

STATE OF NEW YORK     )  
                              :    ss.:  
COUNTY OF KINGS     )

I, Thomas A. Illmensee, being duly sworn, depose and say:

1. I am an Assistant United States Attorney on the staff of Robert A. Morse, United States Attorney for the Eastern District of New York, and I am in charge of the above entitled action on behalf of the federal respondents. This affidavit is based upon the record filed with the court, telephone conversations with members of the Judge Advocate Generals Corps, and my own perusal of Rohe's 201 file.

2. This affidavit is filed in response to petitioner's suggestion that some papers bearing on his appeal were not before the appeal board when it rendered a decision unfavorable to Rohe. It is clear that petitioner's conjecture is refuted by the record and by reason. When sufficient comments and recommendations were obtained from Rohe's unit to enable the New York State Adjutant General to make his recommendation, he forwarded the appeal papers

("22 enclosures") to the Chief of the National Guard Bureau, and recommended disapproval of the appeal (Exh. A, 31). The Chief of the National Guard Bureau also recommended disapproval of the appeal and transmitted the appeal papers ("22 enclosures") to the Commanding General, U. S. Army Reserve Components Personnel and Administration Center (Exh. A, 32). The appeal board, convened by the Commanding General, disapproved the appeal on March 17, 1973. The purpose of the board is to study "all documentation submitted" in reference to an involuntary call up to active duty (Exh. A, 58, ¶3.). The appeal board "Memorandum for Record" is comprised of printed form statements with several typewritten insertions (Exh. A, 55-57). A printed portion of the Memorandum states that the board considered "facts and documents" (Exh. A, 56). Paragraph 5.b. of the Memorandum, a typewritten insertion, states in part that the review included examination of Rohe's 201 file, his appeal letter and several forwarding command endorsements. (Exh. A, 56).

3. When this action was commenced, an officer on the staff of the Judge Advocate General requested Rohe's 201 file from its repository located at the U. S. Army Record Center, St. Louis, Mo. When the file was received, it contained various enlistment papers, medical records, personnel records, duty records, and all of the appeal

papers heretofore filed with the court. Thus, the only logical inference is that the appeal board considered all the appeal papers since they were in Rohe's 201 file when the action was commenced. At the request of the U. S. Attorney, Captain Peter Desler, Office of the Judge Advocate General, extracted from the 201 file all the papers he deemed relevant to the court's judicial review of Rohe's call up. Captain Desler caused these papers to be certified as exact copies "of excerpts of the official military personnel file" of John Rohe, and they were subsequently filed with the court as "Exhibit A".

During the pendency of the action, Rohe's counsel asked your deponent to obtain the 201 file, then located at JAG Headquarters, so that counsel could study it to make sure that all relevant papers had been filed with the court. Counsel's inspection, in my presence, revealed that three papers had been omitted from the papers certified for the court: (1) an undated note from police surgeon Leonard Fox; (2) Lt. Ditullio's letter to the New York Police Department dated December 14, 1971; (3) the Inspector General's letter dated July 16, 1971. My own inspection of the file revealed that an additional letter, from the Assistant AG to the 42nd Infantry Division dated September 28, 1971, had been omitted. All of the above papers, located within Rohe's 201 file, have

been certified by the Army and are filed herewith as "Exhibit D".

4. It is clear that the inadvertant omission of the four documents from those originally filed with the court was not prejudicial to Rohe. The contents of Dr. Fox's note was set forth in another letter received from the New York Police Department (Exh. A, 9). The Inspector General's letter indicates that Rohe claimed a failure of transportation as his excuse for missing summer camp. The letters dated December 14, 1971 and September 28, 1971 contained no substantive facts.

5. My inspection of Rohe's 201 file further indicated that a copy of a form letter sent to Rohe on September 15, 1971 was partially obscured by a return mail receipt stapled to the original (Exh. A, 43). We have not had an opportunity to obtain an additional, unobscured copy, but have obtained the correct wording of the form letter that was blocked by the mail receipt; it reads as follows:

3...Requests for a delay in reporting for active duty after orders are issued will be considered only for emergencies, to include illness and injury.

4. The procedures for requesting either delay or appeal of orders to active duty are contained in paragraphs 16 and 20, respectively, of Army Regulation 135-91. This Army Regulation is available at your National Guard Unit and a unit com-

Affidavit of Thomas A. Illmensee  
in Support of Motion

A-58

mander or full-time technician can explain the proper procedure to be followed in either situation. A copy of this letter is also being furnished to your unit commander for his information.

*Thomas A. Illmensee*

Thomas A. Illmensee  
Assistant U.S. Attorney

Sworn to before me this

30th day of November, 1973

*Ralph Mahon*

RALPH MAHON  
Notary Public, State of New York  
No. 24-4501329  
Qualified in Kings County  
Commission Expires March 30, 1975

ORDER AND STAY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[Same Title]

NOW, upon motion of petitioner, by his attorneys, KUNSTLER KUNSTLER & HYMAN, and upon filing by petitioner of notice of appeal from the order and judgment of the District Court, and upon all other papers and proceedings heretofore had herein, it is

ORDERED that enforcement of the judgment and opinion of the District Court, entered the 12th day of December, 1973, by the Honorable John R. Bartels, United States District Judge, shall be and is hereby stayed pending the appeal by petitioner to the United States Court of Appeals for the Second Circuit and a decision thereon, pursuant to Rule 62 of the Federal Rules of Civil Procedure, said stay being contingent upon the terms hereinafter set forth; and it is further

ORDERED, that petitioner shall perfect and docket his appeal within 20 days of the date of this order and shall thereafter file his brief within 30 days from the date of docketing unless such time is otherwise extended by this Court or the Court of Appeals; and it is further

ORDERED, that the respondents shall be and they hereby are restrained from taking petitioner into custody and otherwise transporting him from the jurisdiction of this Court pending the appeal herein; and it is further



ORDERED, that petitioner shall be released from physical custody of respondents and permitted to return to the civil occupation of patrolman provided, however, that petitioner shall in no wise receive any pay from respondents during the period of the stay nor shall he receive any credit for time served, nor other benefits of active duty during the period that the stay is in effect; and it is further

ORDERED, that petitioner shall not leave the jurisdiction of the Eastern District and Southern Districts of New York without the consent of this Court or the Court of Appeals.

Dated: Brooklyn, New York  
December , 1973

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U.S. D.J.

**MILITARY FILE OF JOHN T. ROHE,  
AS INITIALLY FILED WITH DISTRICT  
COURT**

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[Pages A-62 through A-128 following]

## ENLISTMENT RECORD - ARMED FORCES OF THE UNITED STATES

Form Approved  
Dudger Bureau No. 14-5016

1. LAST NAME - FIRST NAME MIDDLE NAME <b>ROME, JOHN THOMAS</b>		2. SERVICE NUMBER <b>1022 045 602</b>		3. SEX <b>Male</b>	4. RACE <b>Can</b>	CODING COLUMN
5. PHYSICAL AND MENTAL DATA <b>Good</b>	6. PHYSICAL TEST DATA TEST <b>AFQT</b> <b>50</b> SCORE <b>26</b> GROUP <b>IV</b>	7. HOME ADDRESS (No. and street, or "Post Office" if none on state, city, town or P.O., County and State) <b>32-31 35th Street Astoria, New York 11106</b>				
8. PLACE OF ENLISTMENT <b>101 East 33d St NY 10016</b>		9. DATE ENLISTED <b>9 Nov 67</b>	10. FOR SERVICE IN (With Armed Forces and Component) <b>ARMY NATIONAL GUARD</b>		11. NO. YEARS TO SERVE <b>8 1/2</b>	
12. GRADE <b>PVT E-1</b>		13. AUTHORITY FOR DUTY <b>Para 23 AR 25-1 Do B 1st Ed 71st JAG F7210</b>		14. ENLISTMENT AUTHORITY <b>USP 25-1</b>		
DECLARATION OF APPLICANT						
15. DATE OF BIRTH DAY MONTH YEAR <b>8 Sep 49</b>		16. PLACE OF BIRTH (City and State) <b>New York City, N.Y.</b>		17. COLOR OF EYES <b>Brown</b>	18. HEIGHT <b>6'</b>	19. WEIGHT <b>145</b>
20. IF NATURALIZED, GIVE DATE, PLACE AND COURT OF JURISDICTION <b>Not applicable</b>				21. NATURALIZATION OR ALIEN REGISTRATION ACCEPT CARD (Form 1-151) NUMBER <b>N/A</b>		22. MARITAL STATUS <b>Single</b>
23. NUMBER, RELATIONSHIP AND AGE OF PERSONS DEPENDENT ON YOU FOR SUPPORT <b>None</b>						
24. CIVILIAN EDUCATION (Years completed in each. Give kind of degree, if any)						
a. GRAMMAR YEARS GRADUATED YES NO <b>8 X</b>		b. HIGH SCHOOL YEARS GRADUATED YES NO <b>4 X</b>		c. COLLEGE YEARS GRADUATED YES NO <b>None</b>		d. OTHER CIVILIAN SCHOOLS ATTENDED YEARS GRADUATED YES NO <b>None</b>
25. MAIN CIVILIAN OCCUPATION <b>Bank Clerk</b>						
26. REGISTERED YES NO <b>YES</b>		27. NUMBER <b>50 56 19 515</b>		28. CLASSIFICATION <b>1A</b>		29. SELECTIVE SERVICE BOARD NUMBER AND ADDRESS (City, County and State) <b>IP#56 29-29 11st Ave, Astoria, N.Y.</b>
30. HAVE YOU EVER BEEN ARRESTED, CHARGED, OR HELD BY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITIES FOR ANY VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCE? (Prior service personnel consider only those active service.) <b>YES NO</b>						
31. HAVE YOU EVER BEEN CONVICTED OF A FELONY OR ANY OTHER OFFENSE, OR ADJUDICATED A YOUTHFUL OFFENDER OR JUVENILE DELINQUENT (If in the violations of local ordinances)? <b>YES NO</b>						
32. HAVE YOU EVER BEEN IMPRISONED UNDER SENTENCE OF ANY COURT? (Prior service personnel consider only those active service.) <b>YES NO</b>						
33. ARE YOU NOW OR HAVE YOU EVER BEEN ON SUSPENDED SENTENCE, PAROLE, PROBATION, OR ARE YOU AWAITING FINAL ACTION ON CHARGE? (Prior service personnel consider only those active service.) <b>YES NO</b>						
34. HAVE YOU EVER BEEN REJECTED FOR ENLISTMENT OR INDUCTION IN ANY OF THE ARMED FORCES OR BEEN DISCHARGED FROM PREVIOUS SERVICE UNDER OTHER THAN HONORABLE CONDITIONS, UNDER PERSONNEL SECURITY REGULATIONS OR BY REASON OF UNSUITABILITY OR UNDESIRABLE HABITS OR TRAITS OF CHARACTER, OR FOR MEDICAL REASONS? (Prior service personnel consider only those active service.) <b>YES NO</b>						
35. PRIOR SERVICE						
ARMED FORCE	COMPONENT	SERVICE NUMBER	DATE OF ENL. IND. ART AND/OR ORDER TO ACTIVE DUTY	DATE OF DISCHARGE OR RELEASE	TYPE OF DISCHARGE	REASON FOR DISCHARGE
No Prior Service 77						
36. TOTAL SERVICE						
37. PRIOR ROTC OR CADET TRAINING (Years - Type (last)) <b>None</b>			38. RESERVE COMMISSIONED STATUS (Service, grade and S/N now held) <b>None</b>			
39. TO THE BEST OF YOUR KNOWLEDGE AND BELIEF ARE YOU NOW SOUND AND WELL?			40. REMARKS <b>This is to certify that I have been advised of my remaining service obligation of 6 years, 0 months, 0 days, acquired under the National Military Training and Service Act, as amended.</b>			

15. EDITIONS OF THIS FORM ARE OBSOLETE.

To be initiated by initiator when a recruit

30. I know that if I secure my enlistment by means of any false statement, willful misrepresentation or concealment as to my qualifications for enlistment, I am liable to trial by court martial or discharge for desertion at enlistment, and that if rejected because of any disqualification known and concealed by me, I will not be furnished return transportation to place of acceptance. I have read or had explained to me Par 13, AR 604-10 (not applicable to Air Force Personnel) which sets forth the criteria (reasons) for discharge and types of discharge, and certify that I ☐ HAVE ☒ HAVE NEVER (check one) engaged in disloyal or subversive activities as defined therein. I understand that I am expected to be available for order to active duty at any time during this enlistment in event of a mobilization or emergency requiring any services. I understand that if I am ordered to active duty I will be given a physical examination and may be discharged if found physically disqualified on that examination. I certify that I ☐ AM ☒ AM NOT (check one) now drawing retired pay from the government of the United States. I further certify that I ☐ AM ☒ AM NOT (check one) now drawing a pension, disability allowance, or disability compensation from the government of the United States. I declare that I am not now a member of any of the Armed Forces (Army, Air Force, Navy, Marine Corps or Coast Guard) or any reserve components thereof in active, inactive, reserve, or retired status unless so indicated and explained by me; that the foregoing questions and answers thereto have been read to me; that my answers have been correctly recorded and are true in all respects and that I fully understand the conditions under which I am enlisting.

GIVEN AT (Place of acceptance)

DATE OF ACCEPTANCE

Co B 1st Bn 71st Inf NYARNG 101 E 33d St, New York NY 10016

9 Nov 67

SIGNATURE OF WITNESS (First Name, Middle Name, Last Name)

SIGNATURE OF APPLICANT (First Name, Middle Name, Last Name)

31. REMARKS (For use by the Enlisting Officer)

Co-A 92 Co-B 89 103 63 84 121 101

3. DATE DD FORM 53 FORWARDED

None

VERIFIED AT

BY (Signature of Enlisting Officer)

GRADE AND ORGANIZATION OF ENLISTING OFFICER

New York NY

CPT Co B 1 Bn 71 Inf NYARNG

40. OATH OF ENLISTMENT (For service in National Guard or Air National Guard)

STATE OF NEW YORK

CITY, TOWN OR COUNTY NEW YORK

I do hereby acknowledge to have voluntarily enlisted this 9th day of November, 1967, in the (Army ☒ Air ☐ National Guard of the State of NEW YORK and as a Reserve of the (Army ☒ Air ☐ National Guard of the United States ☒ for a period of 6 Yrs 0 Mos 0 Days under the conditions prescribed by law, unless sooner discharged by proper authority.

1. JOHN THOMAS ROHE

FIRST NAME, MIDDLE NAME, LAST NAME

United States and of the State of NEW YORK against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of NEW YORK and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice. So Help me God.

SIGNATURE (First Name, Middle Name, Last Name)

41. OATH OF ENLISTMENT (For service in Regular Army, Regular Air Force, Army Reserve, or Air Force Reserve)

STATE OF

CITY, TOWN, OR MILITARY POST

I, 2, do hereby acknowledge to have voluntarily enlisted, under the conditions prescribed

by law, this 3 day of 19, in the X years unless sooner discharged by proper authority; and I, do solemnly swear (Or Affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

SIGNATURE (First Name, Middle Name, Last Name)

42. CONFIRMATION OF ENLISTMENT

The above oath was subscribed and duly sworn to before me this 9th day of November, 1967. This enlistee was minutely inspected by me prior to subscribing to the oath, and was found to be entirely sober and in full possession of all mental faculties. To the best of my judgment and belief, enlistee fulfills all legal requirements, and in enlisting this applicant, I have strictly observed the regulations governing such enlistment. The above oath, as filled in, was read to the applicant prior to subscribing thereto.

TYPED NAME, GRADE AND ORGANIZATION OF ENLISTING OFFICER

SIGNATURE OF ENLISTING OFFICER

James V. Cagliano Jr CPT CoB 1 Bn 71 Inf

1/ To be initialed by enlistee where "X" appears.

2/ Carefully compare with the name at top of page 1.

3/ The dates in oath and confirmation must be the same day.

The signature must be identical with the subscribed Declaration of Applicant.

4/ Delete one.

5/ Specify period in years, months and days.

43. 1/1

FINGERPRINTS OF RIGHT HAND

1. THUMB

2. INDEX

3. MIDDLE

4. RING

5. LITTLE

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
DIVISION OF MILITARY AND NAVAL AFFAIRS  
PUBLIC SECURITY BUILDING  
STATE CAMPUS  
ALBANY, NEW YORK 12228

A-64

SPECIAL ORDERS  
NUMBER 240

14 DECEMBER 1967

EXTRACT

61 TO 140. BY DIRECTION OF THE SECRETARY OF THE ARMY THE FOLLOWING INDIVIDUALS WITH THEIR CONSENT AND THE CONSENT OF THE GOVERNOR OF THE STATE OF NEW YORK ARE ORDERED TO ACTIVE DUTY FOR TRAINING (ACOUTRA) FOR THE PERIOD INDICATED. EACH INDIVIDUAL WILL PROCEED TO THE ORGANIZATION AND STATION TO WHICH ATTACHED IN SUFFICIENT TIME TO REPORT FOR DUTY ON THE REPORTING DATE INDICATED. TRAVEL DIRECTED IS NECESSARY IN THE MILITARY SERVICE, UPON SATISFACTORY COMPLETION OF THE PERIOD OF ACOUTRA INDICATED, UNLESS SOONER RELIEVED OR EXTENDED BY PROPER AUTHORITY, INDIVIDUAL WILL RETURN TO THE PLACE WHERE HE ENTERED ON ACOUTRA AND STAND RELIEVED THEREFROM. PERSONNEL RECORDS WILL BE FORWARDED IN ACCORDANCE WITH PARAGRAPH 11, NGR 25-5. TRAVEL BY PUBLIC CARRIER (LAND, SEA OR AIR IS AUTHORIZED). EFFECTIVE DATE OF DUTY AND DATE OF RANK WILL BE DETERMINED AT INDIVIDUAL'S FIRST DUTY STATION UP OF AR 135-200 AND APPROPRIATE ENTRIES MADE ON PERSONNEL RECORDS. TRAVEL OF DEPENDENTS AND SHIPMENT OF PERMANENT CHANGE OF STATION WEIGHT ALLOWANCE IS NOT AUTHORIZED. SHIPMENT OF TEMPORARY CHANGE OF STATION WEIGHT ALLOWANCE IS AUTHORIZED. ITEMS OF CLOTHING AUTHORIZED BY CURRENT DIRECTIVES WILL BE TAKEN TO TRAINING INSTALLATION. PAY AND SUBSISTENCE 2182060 18-21 P3121-11, 12 899-999. TVL 2182060 18-23 P3124-21 899-999.

ATTACHED TO (IN TURN):

USA REC STA, <u>ET. DIX. M.J.</u>	(REPORTING DATE)	22 JAN 68
USATC - <u>ET. DIX. M.J.</u>	BEGIN SCTS	29 JAN 68
USATC-1 <u>ET. DIX. M.J.</u>	BEGIN AITS	26 MAR 68

PERIOD: 8 MONTHS, OR UPON COMPLETION OF MOB TRAINING, BUT NOT LESS THAN 4 MONTHS.  
AUTH: AR 135-200; TITLE 10, USC SUBSECTION 672(D); OPO ALLOCATION NO: NY-1-68

CO B PSBBOG (G) 20 BN 60TH INF 68 LEXINGTON AVE NY NY 10010 (420 INF DIV)

NAME	SCOTY CLNCI	ROOM NOB1	SSANT	SPED1
PICCIONE, TAL P PVT E1 NG22045433 115 HARMAN ST BROOKLYN NY 11221	NA	11810	080-38-9753	6 Nov 67

CO A PSBAOD (G) 1 BN 71ST INF 101 E. 330 ST NY NY 10016 (420 INF DIV)

FEHUGH, JOHN J PVT E1 NG22045649 1146 OGDEN AVE BRONX NY 10452	NA	11810	119-42-0239	9 Nov 67
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CO B PSBBOG (G) 1 BN 71ST INF 101 E. 330 ST NY NY 10016 (420 INF DIV)

ROME, JOHN T PVT E1 NG22045648 32-31 35TH ST ASTORIA NY 11108	NA	11810	083-40-1028	9 Nov 67
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CO C PSBOOJ (G) 1 BN 71ST INF 101 E. 330 ST NY NY 10016 (420 INF DIV)

CAPORALE, JOSEPH PVT E1 NG22045647 810 SOUTH MAPLE AVE GLEN ROCK N.J.	NA	11810	071-36-6746	9 Nov 67
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CO A PSBAOD (G) 1 BN 107TH INF 643 PARK AV NY NY 10021 (420 INF DIV)

SPINZEN, IRA H PVT E1 NG22045610 43 PEARL ST VALLEY STREAM NY 11581	NA	11810	102-36-1168	27 Oct 67
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CO B PSBBOG (G) 1 BN 107TH INF 643 PARK AVE NY NY 10021 (420 INF DIV)

SCATLERO, PHILIP F PVT E1 NG22044819 20 HOWARD COURT STATED ISLAND NY 10310	NA	11810	109-40-5734	6 Nov 67
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PARA 61 SO 240 OMNA SNY

14 DECEMBER 1967

CO C PSKOOJ (G) 1 BN 107TH INF 643 PARK AVE NY NY 10021 (420 INF DIV)

SNL:

SCTY CLNC:

RECMD MOS:

SSAN:

BPED

LASARDO, RAPHAEL J PVT E1 NG22044820  
2692 STILLWELL AVE BROOKLYN NY 11224

NA

11810

062-36-1861

8 Nov 67

NAPOLITANO, ROBERT J PVT E1 NG22044821  
652 EDISON AVE BROX NY 10465

NA

11810

072-36-6373

8 Nov 67

BY COMMAND OF THE GOVERNOR:

## OFFICIALS

*John B. Huyck*

JOHN B. HUYCK

COL, AGC, NYARNG

ASSISTANT ADJUTANT GENERAL

A. C. O'HARA  
MAJOR GENERAL, NYARNG  
CHIEF OF STAFF TO THE GOVERNOR

## DISTRIBUTIONS:

H

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As required by Army Regulation Number 135-91, the following pertinent portions of that regulation, together with other applicable rules and regulations, are presented to you for the purpose of providing facts about your Ready Reserve obligation.

Satisfactory participation is defined as regular attendance at all paid unit training assemblies and Annual Field Training as a member of the Army National Guard, unless excused in advance by proper authority.

You are required to attend all periods of duty, unless specifically excused prior to the performance of such duty by your unit commander. Excuse from duty will be confined to exceptional cases only, such as sickness, injury, emergency, or other circumstances beyond your control. All such instances require substantiation by appropriate affidavits or certification by a medical officer. Employment conflicts, overtime, schooling, and loss of income are not normally considered valid reasons for absence from training.

You will not receive credit for attendance at a scheduled unit training assembly unless you are in the prescribed uniform, present a neat and soldierly appearance and perform your assigned duties in a satisfactory manner as determined by the unit commander.

Non-prior service personnel previously enlisted in the New York Army National Guard or who are enlisted under other Reserve component programs requiring unit participation, and those who enlist in the future are required to participate satisfactorily in their units for the full period of their Ready Reserve obligation.

If you fail to attend prescribed unit training without proper authority or, if, because of change in residence, job interference or other reasons you are unable to continue serving in a unit you will be ordered to active duty for 24 months less any period of active duty, active duty for training, or annual field training which you may have served previously. Inactive duty training assemblies may not be counted against the period of active duty. As exceptions to the policy:

- a. If you become eligible for discharge from the National Guard for dependency, hardship or employment necessary to maintain national health, safety, or interest, you will be discharged and appropriately reported to the Selective Service System.
- b. If your unit is inactivated, reorganized, or relocated at the direction of the Department of the Army, and you cannot be reassigned to another unit, you will be transferred to the USAR Control Group (Annual Training), subject to later mandatory assignment under current policy.

The term of enlistment or period of military service of an individual ordered to active duty will be extended as necessary to permit completion of the period of active duty involved.

If you change your residence to a location too distant to continue participation with your assigned unit, prior to departure you will be counseled and provided a Letter of Instructions concerning change of residence. You will be allowed up to 60 days in which to locate and join another Reserve component unit. Responsibility for locating a suitable unit vacancy will rest with you. If you fail to join a unit within the 60-day period, you will be ordered to active duty for a period of 24 months, less any previous period of active duty or active duty for training you may have already served.

Requests for the up to 60-day leave of absence will be submitted to the unit commander in writing, and will indicate your new address, if known, and evidence that a relocation of residence is, in fact, to be made.

If you are granted such leave of absence, you will remain assigned to your unit until your leave of absence expires or is terminated by reassignment, discharge, or return to the unit, and you will be given credit for constructive attendance at training assemblies without pay, for that period.

Should you relocate to an area outside the United States which is not within the geographical jurisdiction of an overseas commander, you will be transferred to the USAR Control Group (Delayed) at the U. S. Army Administration Center. Paid drill units normally are not located outside the United States. You will be subject to order to active duty at the end of the 60-day period if you have not joined a paid drill unit or substantiated a basis for discharge.

For the purpose of order to active duty under these provisions, a member fails to participate satisfactorily when he accrues in any 1 year period a total of five or more unexcused absences from scheduled unit training assemblies. The 1 year period begins on the first paid unit formation from which the member is absent without leave. Also, if you do not

attend Annual Field Training, you likewise fail to participate satisfactorily. It is emphasized that either of these instances will result in your being ordered to Active Duty.

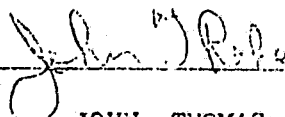
In addition, any absence without leave is an offense under the New York State Military Law and is punishable by disciplinary action, including Court Martial.

\* \* \* \*

INDIVIDUAL'S ACKNOWLEDGEMENT

I have been counseled in the above subject matter; I understand its requirements and agree to comply with the same. I have been furnished a copy of this Orientation Statement for my personal use, study and future reference, and hereby acknowledge receipt.

Signature



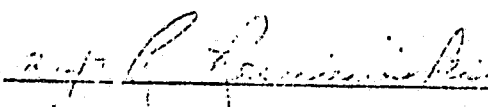
JOHN THOMAS ROHE

Name Typed

Date Signed

2-4-69

WITNESS:



Original: Field 201 File  
 Dupe: DMNA:M (E)  
 Tripl: Individual concerned

DMNA Form 38  
 13 Sep 68

(Previous editions to this form are obsolete)



COMPANY "B"  
1ST BATTALION, 71ST INFANTRY, NYARNG  
(THE AMERICAN GUARD)  
125 WEST 14TH STREET  
NEW YORK, N.Y. 10011

A-68

130ct71

SUBJECT: Statement of Circumstances  
Concerning PV2 John Rohe

Commanding Officer  
1BN 71INF NYARNG  
125 West 14th Street  
New York, NY 10011

1. PV2 John Rohe came to me on the last drill prior to AFT-71 and asked to see the BN Surgeon. He told me that he was on sick leave with the New York City Police Department. Pvt Rohe said that he had a letter from the Police Surgeon and an appointment to go to a hospital on Monday 28Jun71. PV2 Rohe then went to see the BN Surgeon.
2. When PV2 Rohe returned, I questioned him and asked to see the letter and asked him for the name of the Police Surgeon. I informed him that I was a sgt on the police force and that I would be able to check on his story with the police surgeon. Upon further questioning, PV2 Rohe told me that he was not on sick leave but on vacation; that he had an appointment at a clinic and not at a hospital and that when I asked to see the letter, he said that he had flushed it down the toilet bowl.
3. We then returned to see the BN Surgeon, 1LT Petrillo, MD, he ordered PV2 Rohe to report to AFT-71.

*Joseph Santagata*  
JOSEPH SANTAGATA  
1SG CoB

NCL 3

27  
9 17

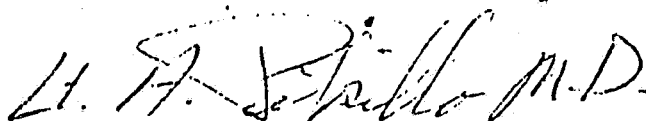
HEADQUARTERS COMPANY  
1st BATTALION, 71st INFANTRY, NYARNG  
(THE AMERICAN GUARD)  
101 EAST 30th STREET  
NEW YORK, N. Y. 10016

13 Oct 71

SUBJECT: Statement of Circumstances on Pvt John Rohe

Commanding Officer  
1st Bn 71st Inf NYARNG  
125 West 14th Street  
New York N.Y. 10011

1. Pvt John Rohe came to me on the last drill prior to APT 71 and said that he was ill. EM is a member of the NYC Police Dept. EM said that he was on sick leave in the police dept, was examined by the Police Surgeon and that he had an appointment to go into the hospital for an examination some time while we were at APT 71. Pvt Rohe said that he had a letter from the Police Surgeon. EM left my office and returned with 1SG Santagata CoB.
2. Upon further questioning that evening EM told me he was on vacation, and when I asked to see the letter again he told me that he flushed it down the toilet bowl. At this time I told him that he was able to attend APT and at Camp Drum he would get a complete examination. EM never reported to i.c.



Lt. A. PETRILLO M.D.  
En Surgeon  
71 Bn/42nd Div. NYARNG

INCL 4

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8

POLICE DEPARTMENT  
NEW YORK, N. Y.

NCL #7-213

A-70

January 3, 1971

Captain John A. Ditullio  
Commanding Officer, Company 'B'  
1st Battalion, 71st Infantry  
Army National Guard of New York  
125 West 14th Street  
New York, N. Y. 10011

Dear Sir:

Records of the Medical Section of this Department indicate Patrolman John Rohe, 6301, 30th Precinct reported Sick to Patrolman Frank Brisa, Medical Section Sick Desk at 0115 hours, June 25, 1971 from his residence telephone YE 2 2388, listed to 32-31 35th Street, Astoria, Queens.

Records further indicate he reported to Week-End Sick Report at the Medical Section at 0920 hours and signed out at 1015 hours, June 27, 1971. He was examined by Police Surgeon, Dr. Leonard Fox, who returned him to full duty effective 0800 hours the same day, June 27, 1971 - diagnosis: Gastroenteritis.

The Rules and Procedures of the Police Department require that a member on Sick Report not leave his residence or place of confinement except by permission of his District Surgeon or for the purpose of visiting a police surgeon.

I trust the above information will aid in answering questions posed in your letter of December 14, 1971.

Yours truly,

*Charles M. Sibon*

Charles M. Sibon, Captain  
Commanding Officer, Medical Section

NCL #73

3.8

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COMPANY "B"  
1ST BATTALION, 71ST INFANTRY, NYARNG  
(THE AMERICAN GUARD)  
125 WEST 14TH STREET  
NEW YORK, N. Y. 10011

27 October 1971

SUBJECT: Statement of Circumstances concerning PV2 John T. Rohe

Commanding Officer  
Co B, 1st Bn, 71st Inf, NYARNG  
125 West 14th Street  
New York, N.Y. 10011

1. On 26Jun71, at approx. 0600 hrs, I was asked by the ISG and so did, telephone PV2 John T. Rohe at his home address. He himself answered the phone and to the best of my knowledge did issue:-

- a) I asked PV2 Rohe why he wasn't down at the Armory.
- b) He said he was sick and that he had severe stomach pains due to an ulcer.
- c) I informed him that it was a Battalion directive that no one could be carried as sick unless the Battalion Doctor examined him.
- d) PV2 Rohe told me that it was "impossible" for him to come down to the Armory. He said that he was sick, he was being carried as sick by the Police Dept., and that he had a "laboratory examination" appointment at a clinic, on Monday (28Jun71).
- e) I informed PV2 Rohe that I was the Company Clerk and was following a Battalion directive. I again restated that he had to be seen by the Battalion Doctor in order to be carried sick.
- f) Again PV2 Rohe said it was "impossible"!
- g) I told him he would therefore be carried as AWOL as per the Battalion directive.
- h) He said O.K. and hung up.

2. This was the only communication that this unit made with PV2 Rohe on 26June1971.

File # 2

COMPANY "B"  
1ST BATTALION, 71ST INFANTRY, NYARNG  
(THE AMERICAN GUARD)  
125 WEST 14TH STREET  
NEW YORK, N. Y. 10011

(Cont'd)

27 October 1971

*Frank S. Green*  
FRANK S. GREEN  
SP4 Co Clerk

32

11

7<sup>2</sup>

DEPTAG - Rohe, John T. 1st Ind  
(28 Sep 71)

CW2 Kenny/na

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ, 42d Infantry Division NYARNG, 125 West 14th Street New York NY 10011  
30 September 1971


THRU: CO, 2d Bde, 42d Inf Div NYARNG, 643 Park Ave New York NY 10021

TO: CO, 1st Bn 71st Inf NYARNG, 125 West 14th Street New York NY 10011

~~Forwarded~~ directing your attention to basic communication.

FOR THE COMMANDER:

2 Incl  
rc

  
R. E. KENNY  
CW2, NYARNG  
Assistant Adjutant General

DHSFL- Rohe, John T. 2nd Ind  
(28 Sep 71)

CPT Solmo/bh

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ 10th 71 INF NYARNG, 125 West 14th Street, New York, N.Y. 10011  
15 Oct 71

THRU: CO, ~~2nd 10th 71 INF NYARNG, 613 Park Ave, NY NY 10021~~ *19 Oct 71*

CG, ~~42d Inf Div NYARNG, 125 W. 14th St, NY NY 10011~~ *1/10/71 2:00 PM*

TO: CG, HQ NYARNG, ATTN: MPA-MP, PSD, State Campus, Albany,  
New York 12226

In compliance with basic communication, attached hereto, are  
statements from unit First Sergeant and Medical Officer.

FOR THE COMMANDER:

4 Incl

added 2 incl

3- Ltr fr 1SGT Co B, 13 Oct 71

4- Ltr fr Medical Officer, 13 Oct 71

*Joseph A. Solmo*  
JOSEPH A. SOLMO

CPT, 10th NYARNG

Assistant Adjutant

4

13

MNPA-MP-E RONE, John T.

3rd Ind.

Mr. Friello/t

083-46-1028 (23Sep71)

SUBJECT: Appeal of Involuntary Order to Active Duty

HEADQUARTERS, NEW YORK ARMY NATIONAL GUARD, PUBLIC SECURITY BUILDING,  
STATE CAMPUS, ALBANY, NEW YORK 12226 21 October 1971

TO: Commanding General, 42d Infantry Division, NYARNG

1. Received and noted. It is essential to these proceedings that subject EM's Company Commander respond to the EM's allegations on a point by point basis in addition to providing his recommendations of approval or disapproval of the appeal.

2. All other Commanders in the chain of command must also indicate their approval or disapproval.

FOR THE COMMANDER:

4 Incl  
1-4 nc

*James J. Kenney*  
JAMES J. KENNEY  
LTC, 3d, NYARNG  
Assistant Adjutant General

5

14



DMFTAG - Rohn, John T. 4th Ind  
(20 Sep 71)

CW2 Kenny/ns

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ, 42d Infantry Division NYARNG, 125 West 14th Street New York NY 10011  
22 October 1971

THRU: CO, ~~2d Bde, 42d INF DIV NYARNG, 643 Park Ave New York NY 10021~~ *CRU 25 Oct 71*

TO: CO, 1st Bn 71st Inf NYARNG, 125 West 14th Street New York NY 10011

Forwarded for compliance with preceding indorsement and return thru this headquarters with the least practicable delay.

FOR THE COMMANDER:

4 Incl  
nc

*R. E. Kenny*  
R. E. KENNY  
CW2, NYARNG  
Assistant Adjutant General

1MSFI - Rohe, John T. 5th Ind  
(23 Sep 71)

CPT Solmo/bh

SUBJECT: Appeal of Involuntary Order to Active Duty

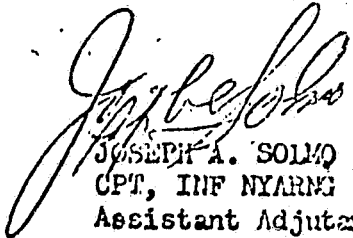
HQ 1BN 71 INF NYARNG, 125 West 14th Street, New York, N.Y. 10011  
27 Oct 71

TO: CC, Co B 1BN 71 INF NYARNG, 125 W. 14th St, NY NY 10011

Forwarded for compliance with 3rd indorsement and return to this  
headquarters with the least practicable delay.

FOR THE COMMANDER:

4 Incl.  
nc

  
JOSEPH A. SOLMO  
CPT, INF NYARNG  
Assistant Adjutant

COBSEI - Rohe, John T. 6th Ind

CPT DiTullio/bl

(28 Sep 71)

SUBJECT: Appeal of Involuntary Order to Active Duty

Co B 1BN 71 INF NYARNG, 125 West 14th Street, New York, N.Y. 10011

28 Oct 71

TO: CO, 1BN 71 INF NYARNG, 125 W. 14th Street, NY NY 10011

1. In compliance with 5th indorsement, your headquarters, the following is hereby submitted.

2. PV2 Rohe's request for an appeal is hereby disapproved.

3. Reasons for disapproval is as follows.

a. (Paragraph 6 of PV2 Rohe's appeal letter) There is no documentation that this EM was on sick report prior to 26 June 1971.

b. (Paragraph 7) Inclosure ~~6~~ ~~letter~~ (PV2 Rohe's statement to the Inspector General) was that he did not talk to the Police Surgeon, but to a Policeman from the Medical Unit.

c. (Paragraph 10) PV2 Rohe did not call us. I, in fact, had my Company Clerk call PV2 Rohe.

d. (Paragraph 12) PV2 Rohe states that he was harassed by me in front of the Company. At no time that evening did I harass PV2 Rohe. When I spoke to PV2 Rohe, it was in the hallway of the Armory, not in front of the Company. When I spoke to PV2 Rohe, I asked him why he was here. He said that he was here to drill, at which time I informed him again that he has been submitted for Active Duty and was being carried on my Morning Report, Leave VOC.

e. (Paragraph 13 & 14) PV2 Rohe states that he spoke to the Inspector General to whom he explained the circumstances. In inclosure 8, the Inspector General states "no transportation is a poor excuse and not valid." This is a contradiction to what PV2 Rohe states in his appeal. In the Inspector General's letter, he states that PV2 Rohe would be an asset to this unit, when in fact, out of the last twenty-five (25) drills, between 15 Dec 70 and 13 Jun 71, a period of six (6) months, PV2 Rohe was sick for thirteen (13) drills and AWOL for three (3) drills. Due to this excessive absences prior to AT-71, I ordered the EM down to the Armory on 22 June 1971, the Tuesday prior to Summer Camp, for the purpose of seeing the Battalion Surgeon to determine if board action was appropriate for Medical Discharge. Inclosures ~~8~~ ~~9~~ are two (2) letters, one from 1SG Joseph Santagata, Co B, and one from 1LT Thomas Petrillo, Battalion Surgeon, explaining what took place that evening and why the EM was ordered to AT-71 by Doctor Petrillo, Battalion Surgeon.

COBSFI (28 Sep 71) 6th Ind 28 Oct 71  
 SUBJECT: Appeal for Involuntary Order to Active Duty

4. Inclosure ② <sup>1-3-1-4</sup> shows PV2 Rohe was in fact sick from 0115 hours on 26 June 1971 and was returned to duty by the Police Surgeon at 0800 hours on 27 June 1971. Based on the above, I feel that my recommendation that PV2 Rohe be placed on Active Duty is valid.

- ②  
 10 Incl: 1-4 ~~me~~  
 added 6 incl.  
 5- Slip fr NYPD, UNDATED  
 6- Confidential Ltr fr EM, UNDATED  
 7-Statement fr Co B Clerk, 27 OCT 71  
 8-Ltr fr Asst I.G., 14 JUL 71  
 9-Ltr fr 1SG Co B, COPY, 13 OCT 71  
 10-Ltr fr Bn Surgeon, COPY, 13 OCT 71

*John A. Di Tullio*  
 JOHN A. DI TULLIO  
 CPT, INF NYARNG  
 Commanding

BNFPI -- Roho, John T. 7th Ind  
(28 Sep 71)

CPT Solino/bh

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ 1BN 71 INF NYARNG, 125 West 14th Street, New York, N.Y. 10011  
28 Oct 71

THRU: CO, 2d Bde 42d Inf Div NYARNG, 643 Park Ave, NY NY 10021

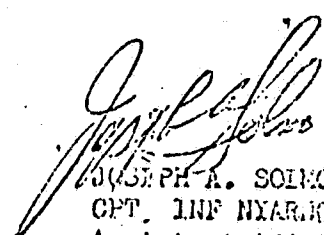
CG, 42d Inf Div NYARNG, 125 W. 14th St, NY NY 10011

TO: CG, HQ NYARNG, ATTN: MNPA-MP(E), PSB, State Campus, Albany,  
New York 12226

This headquarters concurs with Unit Commanders recommendations  
contained in 6th indorsement.

FOR THE COMMANDER:

10 Incl  
nc



JOSEPH A. SOLINO  
CPT, 1NF NYARNG  
Assistant Adjutant

DHMTAG-Rohe, John T. 8th Ind  
(28 Sep 71)

COL Moldaw/k

SUBJECT: Appeal of Involuntary Order to Active Duty

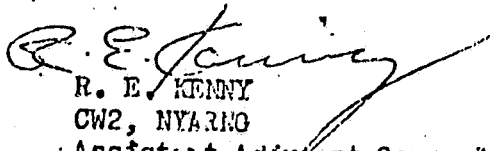
HQ, 42d Infantry Division NYARNG, 125 West 14th Street, New York NY 10011  
28 October 1971

TO: Commanding General, Hq New York Army National Guard, ATTN: IMRA-MP (1),  
PSB, State Campus, Albany, New York 12226

In concurrence with the comments of the unit and Battalion Commanders,  
this headquarters recommends subject EM be ordered to active duty as re-  
quested.

FOR THE COMMANDER:

10 Incl  
nc

  
R. E. KENNY  
CW2, NYARNG  
Assistant Adjutant General

MTA-MP-201-ROHE, John T. (E) 9th Ind  
( 28 Sep 71 )

S- 19 Nov 71  
LTC Kenney/mjl

SUBJECT: Appeal of Involuntary Order to Active Duty

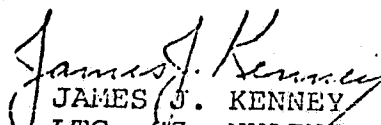
Headquarters, New York Army National Guard, Public Security  
Building, State Campus, Albany, N.Y. 12226 3 Nov 71

TO: Commanding General, 42nd Infantry Division, NYARNG  
ATTN: COL Moldaw

1. Returned for review by your headquarters, specifically to clarify the statements contained in paragraphs 3b and 4 of 6th Ind which appear unsupported by the referenced inclosures. These two items require clarification and a detailed explanation, fully supported by related inclosures.
2. Since this appeal cannot be processed until these items are clarified, a request for 60 day delay in PVT Rohe's active duty reporting date was forwarded to First U.S. Army this date.
3. It appears the 6th Ind was not properly reviewed for content or clarity prior to preparation of the 7th and 8th Indorsements. This lack of administrative review has resulted in an added workload on all concerned and caused unnecessary delay. This correspondence, fully and clearly documented, will be returned not later than 19 November 1971.

FOR THE COMMANDER:

10 Incls:  
nc

  
JAMES J. KENNEY  
LTC, SS, NYARNG  
Assistant Adjutant General

S-17 Nov 71

DHPT-AG (Rohe, John T. 10th Ind

CW2 Kenny/mar

083-40-1028 (28 Sep 71)


SUBJECT: Appeal of Involuntary Order to Active Duty

HQ, 42d Infantry Division NYARNG, 125 West 14th Street, New York NY 10011  
15 November 1971

TO: CO, 1st Bn 71st Inf NYARNG, 125 W 14th St, New York NY 10011

Forwarded for compliance with paragraph 1 of preceding indorsement and  
return to this hq NLT suspense date indicated above.

FOR THE COMMANDER:

10 Incl  
nc  
R. E. KENNY  
CW2, NYARNG  
Assistant Adjutant General

13

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CHSFI-Rohe, John T. 11th Ind

CPT Solano/bh

053-40-1023 (28 Sep 71)

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ 1BN 71 INF NYARNG, 125 West 14th Street, New York, N.Y. 10011  
17 Nov 71

TO: CG, 42d Inf Div NYARNG, ATTN:DHFT-AG, 125 W. 14th St NY NY10011

1. In compliance with preceding indorsement, the following is hereby submitted.

a. Paragraph 3<sup>b</sup> as reads, Inclosure 1, should read, Inclosure 6.

(1) Inclosure 6 is a note from Rohe stating that he reported sick to Ptl Frank Brisa of the medical unit.

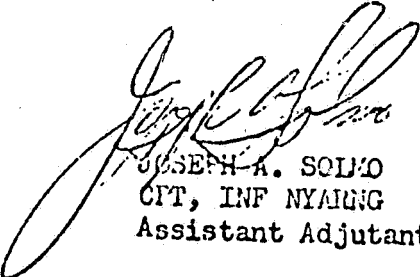
b. Paragraph 4 as reads, Inclosure 6, should read, Inclosure 1-3 and 4. <sup>②</sup>

(1) Inclosure 1-3 is a Police Department Form M.D. 12 stating that Rohe was disabled and confined to home on 26 June 1971 to 27 June 1971.

(2) Inclosure 1-4 shows Rohe as reporting sick at 0115 hours on 26 June 1971.

FOR THE COMMANDER:

10 Incl  
nc

  
JOSEPH A. SOLANO  
CPT, INF NYARNG  
Assistant Adjutant

DHFTAG - Rohe, John T. 12th Ind  
(28 Sep 71)

COL Molday/rs

SUBJECT: Appeal of Involuntary Order to Active Duty

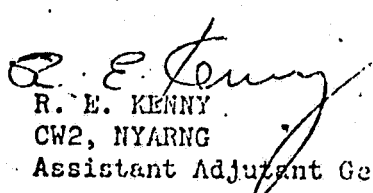
HQ, 42d Infantry Division NYARNG, 125 West 14th Street New York NY 10011  
22 November 1971

TO: Commanding General New York Army National Guard, ATTN: MNPA-LCP, FCB,  
State Campus, Albany, New York 12226

Forwarded.

FOR THE COMMANDER:

10 Incl  
nc

  
R. E. KENNY  
CW2, NYARNG  
Assistant Adjutant General

15

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S- 5 Jan 72

MNPA-MP (E)-ROHE, John T.  
(28 Sep 71)

13th Ind

LTC Kenney/cz

SUBJECT: Appeal of Involuntary Order to Active Duty

Headquarters New York Army National Guard, Public Security  
Building, State Campus, Albany, N.Y. 12226, 1 December 1971

TO: Commanding General, 42nd Infantry Division, NYARNG  
ATTN: COL Moldaw

1. This headquarters has taken necessary action to make pen and ink changes to the 6th and 11th Indorsements so they properly relate to the inclosures referenced therein. Such action should have been accomplished at your headquarters prior to forwarding of the correspondence by 12th Indorsement.
2. However, from the documentation presently available, this headquarters is unable to make a proper determination at this time. The following additional documents are desired in order to make a proper determination and recommendation in this case:
  - a. A signed statement from the appropriate district police surgeon indicating the date on which Patrolman Rohe was first placed on sick report with the Police Department, due to his claimed sickness and injury sustained prior to 26 June 1971, and the date on which he was ordered back to duty. This statement should also indicate if, in fact, the district police surgeon did receive a phone call from PVT Rohe prior to 26 June 1971 relative to his order to report for military duty on that date and what instructions were given at that time. (See paras 6, 7 and 12 of Incl #1)
  - b. A signed statement from Sergeant Pollack of the Police Department Medical Unit, clarifying his part in ordering Patrolman Rohe to remain at his residence. It should be indicated if this was at the direction of the district police surgeon, as an authorized action by Sergeant Pollack, as a routine requirement in Police Department Rules, or as a result of action on the part of Patrolman Rohe. (See para 9 of Incl #1)
  - c. An added statement from the unit commander explaining the basis for his actions in allowing Private Rohe to be carried on unit morning reports as "Abs - SK(NLD)" for 19 drills between 15 Dec 70 and 13 Jun 71, without any apparent documentation to support these entries. There is no evidence found in either Private Rohe's 201 File or Health Record (Incl #11) documenting these absences. (Also see paras 3a and e of 6th Ind). Further, a review of unit morning reports on file at this headquarters for the above period indicate Private

S- 5 Jan 72

MNPA-MP(E)-ROHE, John T. 13th Ind 1 December 1971  
 SUBJECT: Appeal of Involuntary Order to Active Duty

Rohe was carried as present for 11 drills, absent-sick-NLD for 19 drills, and AWOL for only 1 drill. These entries do not agree with the information noted in para 3e of 6th Ind and should be clarified by the unit commander. Since he allowed Private Rohe to be carried as absent-sick for 19 drills, it would appear he had some positive knowledge that he was, in fact, in some sort of sick status. This last factor would also appear to contradict the implication in para 3a of 6th Ind that the unit commander had no knowledge of Private Rohe being on the Police Department sick report. Morning reports further indicate Private Rohe was carried present on 22 Jun 71, AWOL from 26 Jun through 11 Jul 71, and present on 13 Jul 71. All these points should be explained in detail in the unit commanders statement.

3. Request your headquarters monitor this action, with all necessary documentation and inclosures returned to this headquarters not later than 5 Jan 72.

FOR THE COMMANDER:

//  
 12 Incl  
 1 - 10 nc  
 Added  
 11. 201 File

*James J. Kenney*  
 JAMES J. KENNEY  
 LTC, SS, NYARNO  
 Assistant Adjutant General

CF: COL Berkery  
 COL Huyck  
 LTC Grugan

S-3 Jan 72

DHFT-CC-Rohr, John T 14th Ind

083-40-1028 (28 Sep 71)

COL Moldaw/mr

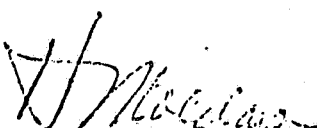
SUBJECT: Appeal of Involuntary Order to Active Duty

HQ, 42d Infantry Division NYARNG, 125 West 14th Street, New York NY 10011  
6 December 1971

TO: CO, 1st Bn 71st Inf NYARNG, 125 W 14th St, New York NY 10011.

1. For compliance with preceding indorsement.
2. Reply and all attached correspondence will be submitted to this headquarters not later than 3 January 1972.

FOR THE COMMANDER:

11 Incl  
nc  
H. A. MOLDAW  
COL, GS, NYARNG  
Chief of Staff

COMSPL-Rohs, John T. 15th Inf  
023-40-1028 (22 Sep 71)

CPT DiTullio/bh

SUBJECT: Appeal of Involuntary Order to Active Duty

Co B 15th Inf INF NYANG, 125 West 14th Street, New York, N.Y. 10011  
15 Jan 72

THRU: ~~CG, 12th Inf Div NYANG, 125 W. 14th St, NY NY 10011~~ *get 1/23/72*

CG 12th Inf Div NYANG, 125 W. 14th St, NY NY 10011

TO: CG, 12th Inf Div NYANG, ATTN: HSPA-MF(5), 100, State Campus, Albany,  
New York 12226

1. As per request for additional documents in the case of the appeal of PVT John T. Rohs, the following letter, inclosure 12 was sent to the Chief Surgeon New York City Police Department, requesting the information required by you.
2. The answer that I received, inclosure 13, was sent to me by Commanding Officer, Medical Section, New York City Police Department, paragraph 2 of inclosure 13 states that Patrolman Rohs was examined by the Police Surgeon and was returned to full duty on that same day, 0800 hours, 27 June 1971.
3. Inclosure 14, in a letter sent by me to PVT Rohs ordering him to report to this unit during Summer camp at Camp Drum, New York, within 13 hours after the receipt of that letter. As already stated by previous documents from the Police Department, PVT Rohs was at this time restored to full duty by the Police Department's Chief Surgeon. He was therefore capable of attending this unit's Annual Summer Camp Tour.
4. At the time of Annual Summer Training at Camp Drum, New York, Western Union was on strike and we were unable to reach PVT Rohs by telegram. We were also unable to reach him by telephone.
5. Inclosure 14, the letter sent to PVT Rohs by this unit, was sent certified mail, return receipt requested. A return receipt was never received by this unit. I now understand that to insure definite delivery of mail, a letter has to be registered as well as certified.

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COMBFI (28 Sep 71) 15th Ind 15 January 1972  
 SUBJECT: Appeal of Involuntary Order to Active Duty

6. In the original documents sent to you by this unit, inclosure 7 is an extract of a conversation held by PVT Rohe and SP4 Green on the morning of 26 June 1971 in which PVT Rohe was informed (para 1, subpara G, inclosure 7) that he was to be carried AWOL.

7. At no time while this unit was at summer camp did PVT Rohe make an effort to contact this unit in order to determine his status.

8. As the proof of the receipt of this letter by PVT Rohe, I submit inclosure 6 of original documentation, a letter submitted by PVT Rohe to the Inspector General's Office, 42d Inf Div which was sent to me by F. Buscher Jr., Assistant I.G., for my information.

9. In this letter, PVT Rohe states that he received AWOL letters for summer camp in the mail.

14 Incl  
 added 3 incl  
 12- Ltr fr Police Surgeon  
 13- Ltr fr Police Dept.  
 14- Ltr fr Co B (AWOL fr AT)

*John F. De Tullio*  
 JOHN F. DE TULLIO  
 CPT, 11F HYAKING  
 Commanding

20

29

DMFT-ROHE, John T. 16th Ind

MG Foery/k

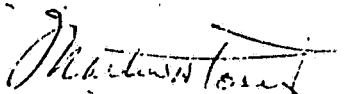
(28 Sep 71)

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ, 42d Infantry Division NYARNG, 125 West 14th Street, New York NY 10011  
14 February 1972

TO: Commanding General, Hq New York Army National Guard, ATTN: MINPA-MP (E),  
PSB, State Campus, Albany, New York 12226

1. Attention is invited to preceding indorsement.
2. It is recommended that PVT Rohe's appeal be disapproved.

  
MARTIN H. FOERY  
Major General, NYARNG

14 Incl  
nc

21

30



HNPA-MP (E)--ROHE, John T.  
083-40-1028 (28 Sep 71)

17th Ind

Mr. Friello/cz

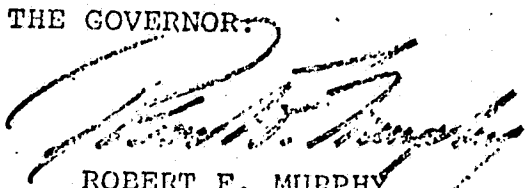
SUBJECT: Appeal of Involuntary Order to Active Duty

Division of Military and Naval Affairs, Public Security  
Building, State Campus, Albany, N.Y. 12226, 18 February 1972

TO: Chief, National Guard Bureau, ATTN: NGB-ARP-E,  
Washington, D. C. 20310

~~Forwarded recommending disapproval, appeal of involuntary  
order to active duty, submitted by PV2 John T. Rohe, in  
accordance with para 20, AR 135-91.~~

FOR THE CHIEF OF STAFF TO THE GOVERNOR:

  
ROBERT F. MURPHY  
Brigadier General, NYARNG  
The Adjutant General

22 Incl :

1 - 14 nc

Added

15. FUSA LO D-02-042,  
11 Feb 72
16. FUSA LO D-01-006,  
5 Jan 72
17. FUSA LO D-11-015, 4 Nov 71
18. FUSA LO D-10-027, 8 Oct 71
19. Cy Ltr, DMNA to SSS,  
5 Nov 71, w/1 Incl
20. Cy Ltr, DMNA to FUSA,  
15 Sep 71
21. Cy Ltr, DMNA to EM, 15 Sep 71  
w/ Ret Receipt #87461
22. Ltr, Co B 1st Bn 71st Inf,  
2 Jul 71, w/3 Inds, 7 Incls

22

NOB-ARP-E ROHE, John T. (Enl) 18th Ind  
(28 Sep 71) 085-40-1028

SUBJECT: Appeal of Involuntary Order to Active Duty

HQ, Department of the Army and the Air Force, National  
Guard Bureau, Washington, DC 20310

TO: Commanding General, United States Army Reserve  
Component Personnel and Administration Center,  
Attn: AGUZ-PAD-PA, St. Louis, Missouri 63132

1. Recommend appeal of involuntary order to active duty be denied.
2. PV2 Rohe failed to satisfactorily participate in annual training as required by paragraph 5d(3), AR 135-91.
3. In view of PV2 Rohe's pending involuntary order to active duty on 17 April 1972 request this case be expedited.

22 Incl  
nc

*JB*  
SCOTT G. CHAPMAN  
Major General  
Chief, National Guard Bureau

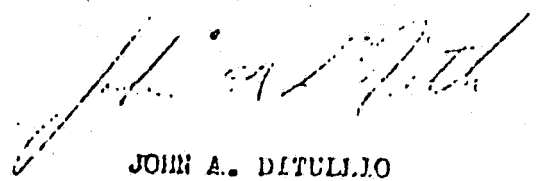
COMPANY "D"  
1ST BATTALION, 71ST INFANTRY, NYARNG  
(THE AMERICAN GUARD)  
101 EAST 34TH STREET  
NEW YORK, N.Y. 10016

28 June 1971

SUBJECT: AWOL from Annual Training

FW2 John T. Roho  
SSAN 023-40-1026  
32-31 35th Street  
Astoria Queens, NY

1. As of 0500 hrs 26June71 you have been AWOL from this unit.
2. You are hereby ordered to report to this unit, Co B 1st Bn 71st Inf within 18 hours after having received this letter.
3. Failure to report to this unit will result in you receiving an AWOL status for each day since the commencement of AWOL.
4. If you accumulate a total of five (5) AWOLs, including those which you may already be charged with, you shall be submitted for Involuntary Active Duty.



JOHN A. DITULLIO  
1LT INF NYARNG  
Commanding

39

1110 11

ON JUNE 26, 1971 - I WAS UNABLE TO REPORT  
 FOR SUMMER CAMP DUTY. I REMEMBERED SOME  
 TO THE POLICE DEPT. AFTER I TOOK CARE OF THE  
 MEDICAL UNIT. I TOOK MY REPORT I WAS ORDERED  
 TO REMAIN AT MY RESIDENCE AND NOT TO REPORT  
 FOR SUMMER CAMP. I CALLED THEM THAT I WAS  
 ON SAT JUNE 26, 1971 TO TELL THEM THAT I WAS  
 SICK AND UNABLE TO REPORT. - THE Y CO B-1/71 TOLD  
 ME THAT I WOULD HAVE TO REPORT WHICH I  
 DID NOT. I LATER RECEIVED AVOLO PAPERS FOR  
 SUMMER CAMP IN THE MAIL. ON THE TUESDAY  
 THE FIRST ONE BACK FROM SUMMER CAMP LT.  
 DITULLIO OF B Co. TOLD ME TO GO HOME AS  
 I WAS NO LONGER IN THE UNIT. HE WOULD  
 NOT LOOK AT THE MEDICAL PAPERS I HAD  
 AS PROOF OF MY ILLNESS, NOR WOULD HE LISTEN  
 TO MY STORY. HE SAID I WOULD BE DRAFTED.  
 JOINT ROYAL COB 1/71

Confidential

Company B  
1ST BN, 71ST INFANTRY NYARNG  
(THE AMERICAN GUARD)  
101 East 33rd Street  
New York, N.Y. 10016

A-96

Date: 2 July 1971

SUBJECT: Request for Active Duty UP AR 135-91

Commanding Officer  
1BN 71 INF NYARNG  
101 East 33rd Street  
New York, N.Y. 10016

1. Request that active duty orders be issued on the individual names below under the provisions of AR 135-91.
2. I have personally verified the circumstances in this case and have determined that the administrative requirements of AR 135-91 have been adequately complied with and that the individual concerned failed to fulfill the satisfactory participation requirements of that regulation.
3. The following information is provided:
  - a. Full name: RONE, JOHN T.
  - b. Grade: PV2
  - c. SSAN: 083-40-1028
  - d. AING unit of assignment: Co B 1BN 71 Inf NYARNG (PSC 803)
  - e. HQR: 32-31 35th Street Astoria, NY 11106
  - f. DOR: 9 Mar 68
  - g. Period of AD requested: 19 months, 4 days.
  - h. Time previously served on active duty, AFT, ACDUTRA: 22Jan68-20May68  
29Jun68-14Jul68  
28Jun69-29Jul69  
24Mar70-30Mar70  
15Aug70
  - i. PMOS: 11B10
  - j. DMOS: 11E10
  - k. EPED: 9 Nov 67
  - l. BASD: NA
  - m. Authority: 10 USC 673a and paragraph 6H(2) AR 135-91.

6H2(b)

JOHN A. DITULLIO  
1BN 71 INF NYARNG  
Commanding

BN Form A-114  
1/71 Inf  
(Rev Mar 70)

UNISPI ( 2 Jul 71 ) 1st Ind  
SUBJECT: Request for Active Duty UP AR 135-91

A-97

HQ, 1st Bn 71st Inf NYARNG, 101 East 33rd Street New York NY 10016 7Jul71

THRU: CG, 2d Ede 42d Inf Div NYARNG, 643 Park Ave New York NY 10021

CG, 42d Inf Div NYARNG, 101 East 33rd Street New York NY 10016

TO: CG, NYARNG Public Security Bldg, State Campus Albany NY 12226

Recommend approval.

FOR THE COMMANDER:

6 Incl

1. Check List
2. DD Form 44
3. Ltr Subj OAD 2Jul71
4. Ltr Subj Request invol AD 2Jul71
5. Ltr Subj AWOL 28Jun71
6. 1201 file

*Joseph A. Solmo*  
JOSEPH A. SOLMO  
CPT Infantry NYARNG  
Adjutant

BHFTA 2d Ind

Maj Brennon/av

HQ 2D EDE 42D INF DIV NYARNG, 643 Park Ave, NY NY 10021 14 Jul 71

TO: CG, 42d Inf Div NYARNG, 125 West 14th St, NY, NY 10011

Recommend approval.

FOR THE COMMANDER:

6 Incls  
n/c

*Edward A. Brennon*  
EDWARD A. BRENNON  
Major Inf NYARNG  
Asst Adjutant

Form No A-1114A  
1/71 Inf  
May 70

36

Company B  
HEADQUARTERS  
1ST LN, 71ST INFANTRY HYAKING  
(THE AMERICAN GUARD)  
101 East 32nd Street  
New York, N.Y. 10016

CHECK LISTDate: 2 Jul 71

1. In support of this request for involuntary active duty UP AR 135-91, the following information concerning subject Enlisted Man's unsatisfactory performance is submitted:

(a)	<u>DATES OF UNOL</u> <u>OR UNSAT. PER.</u>	<u>VERIFIED ON</u> <u>UNIT MR DTL.</u>	<u>LETTER TO</u> <u>EM DATED</u>	<u>LETTER RECD.</u> <u>or REET. DATE</u>
1.	<u>26Jun71</u>	<u>26Jun71</u>	<u>          </u>	<u>          </u>
2.	<u>26Jun71</u>	<u>30Jun71</u>	<u>          </u>	<u>          </u>
3.	<u>26Jun71</u>	<u>1Jul71</u>	<u>          </u>	<u>          </u>
4.	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
5.	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>

Subject EM has been advised by certified mail, deliver to addressee only, return receipt requested, or by personal service, following each unauthorized absence or unsatisfactory performance. Attached hereto are carbon copies of warning letters and receipts, undeliverable letters and receipts, or signed, witnessed acknowledgement of receipt by the EM. (Incl 1 to 5) (If more than 5 unexcused absences are involved, attach documentation as added inclosures.)

(b) Copy of required letter of notification to EM that a request for his involuntary order to active duty has been submitted. Such letter was forwarded by certified mail, deliver to addressee only, return receipt requested. Return receipt or undeliverable letter attached. (Incl 6)

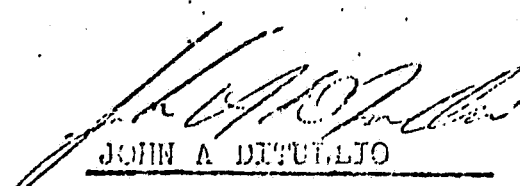
(c) The attendance record on this EM has been properly recorded and verified as required by paragraph 1-8 12(added) MR 25.1.

2. I have personally verified this case and it meets all the requirements for the requested action.

A-99

Incl

1. Warning Ltr #1 dtd \_\_\_\_\_  
w/ret rec # \_\_\_\_\_
2. Warning Ltr #2 dtd \_\_\_\_\_  
w/ret rec # \_\_\_\_\_
3. Warning Ltr #3 dtd \_\_\_\_\_  
w/ret rec # \_\_\_\_\_
- ~~4. Warning Ltr #4 dtd \_\_\_\_\_  
w/ret rec # \_\_\_\_\_~~
5. Warning Ltr #5 dtd \_\_\_\_\_  
w/ret rec # \_\_\_\_\_
6. Active Duty Ltr dtd 2 Jul 71  
w/ret rec # 333417
7. EO Form 44 dtd 2 Jul 71 (in dup)
8. Cy Orientation statement

  
JOHN A. DITULLIO

1LT INF NYANG  
Commanding

NOTE: This Check List will be completed in every case of requested involuntary active duty UP Alt 135-91 and forwarded in the Field 201 file as the top document above the Field Personnel File Divider. The unit commander submitting the request will personally sign the Check List.

Subject Ltr: request for involuntary active duty from CO CoB.



DHETAG-Roho, John T 3d Ind

CW2 Kenny/mr

(25Jul71 ) 063-1,0-1028

SUBJECT: Request for Active Duty Orders UP AR 135-21

HQ, 42d Infantry Division NYARNG, 125 West 14th Street New York NY 10011  
3 September 1971TO: Commanding General New York Army National Guard, ATTN: MHPA-MP,  
PSB, State Campus, Albany, New York 12226

Forwarded, recommending approval.

FOR THE COMMANDER:

7 Incl

Added 1 incl

7. DP, SJA, 28Sep71

*R. E. KENNY*

R. E. KENNY

CW2, NYARNG

Assistant Adjutant General

Incl #1 22.

REGIMENTAL HEADQUARTERS  
1ST BN, 71ST INFANTRY REARMS  
(THE AMERICAN GUARD)  
101 East 33rd Street  
New York, N.Y. 10016

Date: 2 Jul 71

SUBJECT: Orders to Active Duty

JOHN T. ROHE  
32-31 35th Street  
Astoria, N.Y. 11106

1. This letter is to confirm your unsatisfactory performances on the following dates:

- a. 26Jun71-2Jul71 (AT)
- b.
- c.
- d.
- e.

2. These unsatisfactory performances constitute unsatisfactory participation under AR 135-91, the provisions of which were fully explained to you. Accordingly, you have been reported for involuntary order to active duty for a period of 12 months, 4 days.

3. Unless notified otherwise, you are not required or authorized to attend unit assemblies while awaiting entry on active duty and are granted excused absence during the period involved.

4. The effective date of your being ordered to active duty will be approximately 30 days from the date of this letter.

*John A. DiIulio*  
JOHN A. DI IULLIO  
1LT 1AF REARMS  
Commanding

Form 44

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <b>JOHN T. ROHE</b>		POSTMARK OR DATE
STREET AND NO. <b>32-31 35th Street</b>		
P.O., STATE AND ZIP CODE <b>Astoria, N.Y. 11106</b>		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN	1. Shows to whom and date delivered	111
PLI	2. Shows to whom, date and where delivered	
SERVICES	3. Shows to whom, date and where delivered	
DELIVER TO ADDRESSEE ONLY		

333417



STATE OF NEW YORK  
DIVISION OF MILITARY AND NAVAL AFFAIRS  
PUBLIC SECURITY BUILDING  
STATE CAMPUS  
ALBANY, NEW YORK 12226

MAJOR GENERAL J. C. BAKER  
CHIEF OF STAFF TO THE GOVERNOR

MNPA-M/001-0000, John T.  
083-40-1028

15 September 1971

SUBJECT: Request for Active Duty Orders UP AR 135-91

Commanding General  
First US Army  
ATTN: 1000-00/1r. Gouty  
Fort George G. Meade  
Maryland 20755

1. Request that active duty orders be issued on the individual named below under the provisions of AR 135-91.
2. I have personally verified the circumstances in this case and have determined that the administrative requirements of AR 135-91 have been adequately complied with and that the individual concerned failed to fulfill the satisfactory participation requirements of that regulation.
3. The following information is provided:
  - a. Full name: KONE, JOHN T.
  - b. Grade: PV2
  - c. SSAN: 083-40-1028
  - d. ARNG unit of assignment: Co B 1st Bn 71 Infantry (PSCBOG)
  - e. HOR: 32-31 35th Street Astoria, NY 11106
  - f. DOR: 9 Mar 68
  - g. Period of AD requested: 19 months, 4 days
  - h. Time previously served on active duty, AFT, ACOUTRA: 22 Jan 68-20 May 68  
29 Jun 68-17 Jul 68  
28 Jun 69-19 Jan 69  
24 Mar 70-30 Mar 70  
15 Aug 70
  - i. PMOS: 11B10

1000-00/1r. Gouty

H!

j. DMOS: 11B10

k. BPED: 9 Nov 67

A-103

l. BASD: N/A

m. Authority: 10 USC 673a and paragraph -6110 135-91.

FOR THE CHIEF OF STAFF TO THE GOVERNOR:

2 Incl

1 Orientation Statement

2 Cy Appeal Letter

R4F/t

JAMES J. KENNEY

LTC, SS, NYARNG

Assistant Adjutant General

REGIST

CERTIFI

INSURE

CNIC

71



STATE OF NEW YORK  
DIVISION OF MILITARY AND NAVAL AFFAIRS  
PUBLIC SECURITY BUILDING  
STATE CAMPUS  
ALBANY, NEW YORK 12220

MAJOR GENERAL J. C. BAKER  
CHIEF OF STAFF TO THE GOVERNOR

HNPA-MP 104 John T.

15 September 1971

SUBJECT: Request for Active Duty Orders AR 135-91

For John T. Baker  
22-21 25th Street  
Long Island City, New York 11106

1. This office has been requested to order you to active duty for 24 months, less any active duty or active duty for training time previously served, for unsatisfactory participation in accordance with the provisions of Army Regulation No. 135-91.
2. Documentation presented by your unit commander is complete and this office has requested assignment instructions from Department of the Army this date. Active duty orders will be issued in approximately 30 days.
3. In the event you wish to appeal your order to active duty by requesting a delay or relief from call to active duty, you must, within 15 days of receipt of this letter, present a written request for such delay or relief with supporting documentation through your unit commander. Requests for a delay in reporting for active duty after orders are issued will be considered. Include illness and injury.

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)  
(Additional charges required for these services)

☐ Show to whom, date and address where delivered ☒ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below

RED NO. 7461	SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) <i>[Signature]</i>
ED NO.	SIGNATURE OF ADDRESSEE'S AGENT, IF ANY <i>[Signature]</i>
D NO.	
DELIVERED 15/9/71	SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

or appeal of order to 20, respectively, of Army available at your National technician can explain the tion. A copy of this letter for his information.

1/16/71

5. You will be required to undergo a complete medical examination upon reporting for active duty unless you have undergone a medical examination within the past 12 months and sign a statement that to the best of your knowledge there has been no significant change in your physical condition. If you are found to be physically disqualified, you will be discharged at the Reception Center.

FOR THE CHIEF OF STAFF TO THE GOVERNOR:

cc: Unit Co. Co. 1st Lt.  
Area Comd. 71st Infantry  
JJR/t

JAMES J. KERNEY  
LTC, SS, NYARNG  
Assistant Adjutant General

September 22, 1971

Departments of the Army and Air Force  
 National Guard of New York  
 State of New York  
 Division of Military and Naval Affairs  
 Public Security Building  
 State Campus  
 Albany, New York 12226

063-10-1078

11 B 10

Dear Sir:

1. This letter is an appeal in regard to a registered letter which I received on September 18, 1971 stating that I may be subjected for active military duty.

2. I am attached to Company B 1 Bn. 71 Inf. NYARNG located at 125 West 14th Street New York City, New York. My company commander is Lt. John Di Tullio.

3. The reason my company commander is trying to have me assigned for active duty is based on the following incident:

4. I am a New York City Police Officer assigned to the 30 Precinct in Manhattan's Harlem area. I have a clean record with the department, and am considered a good cop.

5. On Saturday June 26, 1971 I was scheduled to depart for my two weeks annual training at Camp Drum, New York with my NYARNG unit.

6. Due to sickness and injury I sustained prior to June 26 I was on sick report with the Police Department, unable and unfit for duty.

7. I called my district police surgeon and told him that I was supposed to report for military duty on June 26. He said he could not grant me permission to leave my residence until he could see me to evaluate my sickness.

NEW YORK CITY POLICE DEPARTMENT RULES AND PROCEDURES Chapter 22 2.1  
 "A member of the force on sick report should not leave his residence or place of confinement except by permission of his district police surgeon or for the purpose of visiting his district police surgeon. Permission should not be granted for a period longer than one week."

8. I was also ordered to remain at my residence by Sgt. Pollack of the Medical Unit. If I had left my residence, I would have violated the Police Department Rules and Procedures of Commissioner Patrick Murphy.

10 I called my unit on June 26 prior to their leaving for summer camp. I explained the circumstances to the clerk in the company, since Lt. Di Tullio refused to speak to me. The clerk relayed a message from Lt. Di Tullio stating that I was ordered to report to the armory immediately or else he would submit my name for active duty. I told the clerk that I could not report, being physically unable.

11 On July 11 my unit returned from summer camp. By that time I had seen my police department surgeon and had been ordered back to duty.

12 I reported to the armory for a regular Tuesday drill on July 13. On this date I was harassed by Lt. Di Tullio in front of the company. He said I was no longer in the unit and that he had submitted my name for active duty. Again he refused to listen to my excuse, which I think was justifiable for my not participating at summer camp.

13 At a later date I spoke to Inspector General Major Curran, to whom I was able to explain the circumstances. He was very polite and said he would re-schedule me with the unit 27 BDE, -50 ARMD Division, so that I could fulfill my military obligation for two weeks training. I agreed, since I did not want to violate army rules. Maj. Curran said he would speak to my company commander.

14 On a later date I was informed by Maj. Curran that Lt. Di Tullio refused to let me join another unit for two weeks training. Maj. Curran said he could only act as an advisor and could not order Lt. Di Tullio to let me go to summer camp. Maj. Curran in turn told me to write a letter to the Departments of the Army and Air Force National Guard of New York asking for an appeal and a reversal of the decision made by Lt. Di Tullio.

15 I don't think it is a policy of the NYARNG to send a person away especially when he has such a valid reason. I also think that, concerning my situation, Lt. Di Tullio used conduct un-becoming for an officer.

16 Enclosed is proof of my being on sick report for June 26, 1971 the day scheduled for departure.

17 The legal aid lawyers of the Police Department also suggested my writing to you before any other steps are taken.

18 I have enough worries about the Police Department since the killings and shootings of policemen in New York City are plentiful. I would very much appreciate an answer soon, since I am seriously worried about this situation. I am in shock and disbelief to think that this situation occurred, and under the circumstances given, that one would try to send a Police Officer a protector of life and property - definitely law abiding, away for active military duty.

19 I appreciate your help and understanding.

Sincerely,

*John T. Rohe*

Ptl. John T. Rohe

enclosures



1234-MP

29 September 1971

Private John T. Roha  
32-31 30th Street  
Astoria, New York 11106

Dear Private Roha:

This is to acknowledge receipt of your letter of 23 September 1971 concerning your appeal of involuntary order to active duty.

Under the provisions of para 26, AR 135-1, your appeal must be submitted to your Commanding Officer for his comments and recommendations. Consequently, this office has forwarded your letter, thru channels, to Captain John Di Tullio, Company B 71st Infantry, HYABNG.

Upon receipt at this office of Captain Di Tullio's recommendation, this office will advise you concerning the status of your appeal.

Sincerely yours,

OWEN F. GRUGAN  
LTC, GS, HYABNG  
Assistant Adjutant General

RAY/c  
cc: CO Co B 71st Inf, HYABNG

200/22

47

DEPARTMENT OF THE ARMY  
HEADQUARTERS, FIRST UNITED STATES ARMY  
FORT GEORGE G. MEADE, MARYLAND 20755

8 October 1971

AHAAG-CA  
LETTER ORDERS D-10-027

SUBJECT: Order to Active Duty - Reservist (INVOLUNTARY)

TC 116. By the direction of the President, the following named individual is ordered to ACTIVE DUTY for the period indicated unless sooner relieved. He will proceed from his current location in sufficient time to report as indicated on the date specified.

JOHN T. RONE  
32-31 35th Street  
Astoria, NY 11106

083-40-1028 PV2 11B10 for duty in 11H10  
Co B, 1st Bn, 71st Inf, State of NY, Bldg 22  
State Campus, Albany, NY 12226  
UIC: PSCBOG

ADMINISTRATIVE ACCOUNTING DATA

Authority: 10 U. S. C. 673a, AR 135-91

Home of Record 32-31 35th Street, Astoria, NY 11106

PFN: NA

Component: ARNG

Sex: Male

PCS HQ: 1EE2

Ultimate Assignment: 15th AG Co. Admin, Fort Hood, Texas 76554

UIC: 2JNA Chg 11 CTQ 5111

Effective date (OAD): 15 November 1971

FOR THE INDIVIDUAL

Effective date of active duty: 15 November 1971

Period of Active Duty: 19 months 4 days

Assign to: US Army Reception Station, Fort Dix, New Jersey 08610

Reporting date: 15 November 1971

Availability date: To be determined by CO USAOSREPLSTA (If applicable)


Port call date: To be determined by CO USAOSREPLSTA (If applicable)

- Special Instructions:
1. Term of enlistment of member concerned is extend as necessary to permit completion of period of active duty for which ordered and/or served if applicable.
  2. You are relieved from your present National Guard or USAR assignment upon reporting date to Reception Station.
  3. Reception Station will use orders format TC 209 (AR 310-10) for further assignment.
  4. Comply with the following numbered items of DA Supplemental instructions: 1, 16, 26, 29, 51 and 82.

1/NC24/8

LETTER ORDERS D-10-027 HEADQUARTERS FIRST US ARMY 8 Oct 71 Contd

FOR THE COMMANDER:

  
 ALAN L. ATTERBURY  
 1LT, AGC  
 Asst AG

DISTRIBUTION:

- 1C - Individual
- 2C - AHAAG-CA
- 1 - AHAAG-MR
- 5 - CO, US Army Reception Station, Fort Dix, New Jersey 08610
- 1 - CO, 15th AG Co Admin, Fort Hood, Texas 76554
- 1 - CO, Co B, 1st Bn, 71st Inf, State of NY, Bldg 22, State Campus, Albany, NY 12226
- 4 - TAG, State of NY, Div of Mil and Nav Affairs, Public Scty Bldg 22, State Campus, Albany, NY 12226

SPECIAL DISTRIBUTION:

- 5 - CO, US Army Personnel Svc Support Center, ATTN: AGFE, Fort Benjamin Harrison, Indiana 46219

DEPARTMENT OF THE ARMY  
HEADQUARTERS, FIRST UNITED STATES ARMY  
FORT GEORGE G. MEADE, MARYLAND 20785

A-111

AMAAG-CA  
LETTER ORDERS D- 11-015

4 November 1971

SUBJECT: Amendment of Active Duty Orders

Individual Concerned

1. TC 469. Following orders are changed as indicated.

Action: Amended

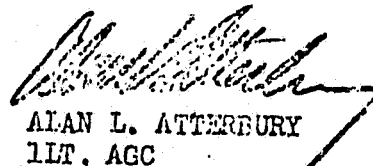
So much of: ID D-10-027 this headquarters dated 8 October 1971

Pertaining to: JOHN T. ROHE 083-40-1028 PV2 11B10 for duty in 1111  
32-31 35th St. Co B 1st Bn 71st Inf, State of NY, Bldg  
Astoria, NY 11106 22 State Campus, Albany, NY 12226  
UIC: PSCBOG

As reads: Reporting Date: 15 November 1971

How changed: Reporting Date: 17 January 1972

FOR THE COMMANDER:

  
ALAN L. ATTERBURY  
1LT, AGC  
Asst AG

DISTRIBUTION:

- 10 - Individual
- 20 - AMAAG-CA
- 1 - AMAAG-MR
- 5 - CO, USA Reception Station, Fort Dix, New Jersey 08610
- 5 - CO, 15th AG Co Admin, Fort Hood, Texas 76554
- 5 - CO, Co B 1st Bn 71st Inf, State of NY, Bldg 22, State Campus, Albany, NY 12226
- 5 - CIS, State of NY, Div of Mil & Nav Affairs, Pub Scty Bldg 22, State Campus Albany, NY 12226

SPECIAL DISTRIBUTION:

- 5 - CO, USAAC, ATTN: AFAC-M-PRC, St Louis, Missouri 63132
- 5 - CO, US Army Personnel Svc Sup Cen, ATTN: AGFE, Ft Benjamin Harrison, Indiana 46219

1/11/71

DEPARTMENT OF THE ARMY  
HEADQUARTERS, FIRST UNITED STATES ARMY  
FORT GEORGE G. MEADE, MARYLAND 20755

A-112

ANAAG-CA  
LETTER ORDERS D-01-006

5 January 1972

SUBJECT: Amendment of Active Duty Orders

Individual Concerned

~~1. TC 469.~~ Following orders are changed as indicated.

Action: Amended

So much of: LO D-11-015 this headquarters dated 4 November 1971

Pertaining to: JOHN T. ROHE 083-40-1028 PV2 11B10 for duty in 11H10  
32-31 35th St. Co B, 1st Bn, 71st Inf, State of NY, Bldg 22,  
Astoria, NY 11106 State Campus, Albany, New York 12226  
UTC: PSCBOG

As reads: Reporting Date: 17 January 1972

Now changed: Reporting Date: 17 February 1972

FOR THE COMMANDER:

*Richard A. Graham*  
RICHARD A. GRAHAM  
CPT, AGC  
Asst AG

DISTRIBUTION:

- 40 - Individual
- 20 - ANAAG-CA
- 1 - ANAAG-MR
- 5 - CO, USA Reception Station, Fort Dix, New Jersey 08640
- 5 - CO, 15th AG Co Admin, Fort Hood, Texas 76554
- 5 - CO, Co B, 1st Bn, 71st Inf, State of NY, Bldg 22, State Campus, Albany, NY 12226
- 5 - C/S to the Governor, State of NY, Div of Mil & Nav Affairs, Pub Scty Bldg 22, State Campus, Albany, New York 12226

SPECIAL DISTRIBUTION:

- 5 - CO, US Army Personnel Svc Sup Cen, ATTN: AGFE, Ft Benjamin Harrison, Indiana 46249

1N21 # 16

DEPARTMENT OF THE ARMY  
HEADQUARTERS, FIRST UNITED STATES ARMY  
FORT GEORGE G. MEADE, MARYLAND 20755

AHAAG-CA  
LETTER ORDERS D- 02-042

11 February 1972

SUBJECT: Amendment of Active Duty Orders

Individual Concerned

1. TC 469. Following orders are changed as indicated.

Action: Amended

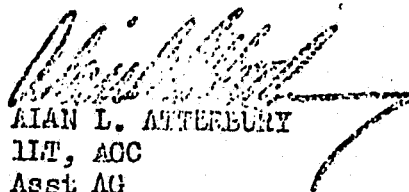
So much of: LO D-01-006 this headquarters dated 5 January 1972

Pertaining to: John T. Rohe 083-40-1028 NYC 11B10 for duty in 11F10  
32-31 35th Street Co. B, 1st Bn, 71st Inf, State of NY, Bldg 2  
Astoria, New York State Campus, Albany, New York 12226  
11106 UIC: 180800

As reads: Reporting Date: 17 February 1972

How changed: Reporting Date: 17 April 1972

FOR THE COMMANDER:

  
ALAN L. ANTEBURY  
LIT, AGC  
Asst AG

DISTRIBUTION:

- 40 - Individual
- 20 - AHAAG-CA
- 1 - AHAAG-MR
- 5 - CO, USA Reception Station, Fort Dix, New Jersey 08610
- 5 - CO, 15th AG Co Admin., Fort Hood, Texas 76554
- 5 - CO, Co B, 1st Bn, 71st Inf, State of NY, Bldg 22, State Campus, Albany, NY 12226
- 5 - C/S, State of NY, Div of Mil & Nav Affairs, Pub Scty Bldg 22, State Campus, Albany, New York 12226

SPECIAL DISTRIBUTION:

- 5 - CO, US Army Personnel Svc Sup Cn, ATTN: AGFE, Ft Benjamin Harrison, Indiana 46249

1/NC 47/5

*Enlisted*

Rohe, John T.  
SSN 083-40-1028

28 MAR 1972

MEMO FOR RECORD:

Basis for Action: Bd convened 17 Mar 72 to reconsider application  
for appeal for invol order to AD - disapproved.

COORDINATION:

Alan T. Jackson/LTC/RCPD/7420  
William M. Toohey/MAJ/RCPD/7841  
Esther Smith/CS-10/RCPD/7586  
Thomas C. Hutchason/CS-9/RCPD/7561

F. Whitson/PAD-PA/7416

FILE IN CTR FILE, KC PAC  
INDEXED FW 27 Apr 72  
PERMANENT

53



DEPARTMENT OF THE ARMY  
OFFICE OF THE ADJUTANT GENERAL

A-115

U. S. ARMY RESERVE COMPONENTS PERSONNEL AND ADMINISTRATION CENTER  
ST. LOUIS, MISSOURI 63132

IN REPLY REFER TO

AGUZ-PAD-PA Rohe, John T.  
SSN 083-40-1028

S-

28 MAR 1972

SUBJECT: Transmittal of Correspondence

Chief  
National Guard Bureau  
ATTN: NGU-ARP-E

1. ☒ The appeal of order to involuntary active duty submitted by the above individual is returned for final disposition as directed in the attached Department of the Army Reserve Components Personnel and Administration Center AR 135-81 Involuntary Active Duty Appeal Board.
2. ☐ The appeal application submitted by the above named individual is returned for further action prior to referral to the Department of the Army Reserve Components Personnel and Administration Center AR 135-81 Involuntary Active Duty Appeal Board:
  - a. ☐ Orientation statement signed by member and dated before unexcused absences charged.
  - b. ☐ Submission of appeal by individual or his attorney (no other individual is acceptable).
  - c. ☐ A copy of the letter of instruction and post office receipt not signed by individual or filed in the member's Military Personnel Records Jacket.
  - d. ☐ Proof of attempted contact with individual after return of undelivered mail.
  - e. ☐ Evidence of investigation of individual claims (to include, if any, cogent or emergency reasons which prevented the member from attending).
  - f. ☐
3. ☐ This application is returned without action and will not be referred to the Department of the Army Reserve Components Personnel and Administration Center Involuntary Active Duty Appeal Board for the following reason(s):
  - a. ☐ Delayed notification of drill(s) missed, without authority, prior to the next scheduled training assembly.
  - b. ☐ Certified mail signed by other than addressee.
  - c. ☐

BY ORDER OF THE SECRETARY OF THE ARMY:

*M. E. Davis*  
Adjutant General

Incl

69Cy Bd 1cr

AGUZ FL 1089  
1 Aug 71

54





DEPARTMENT OF THE ARMY  
OFFICE OF THE ADJUTANT GENERAL

U. S. ARMY RESERVE COMPONENTS PERSONNEL AND ADMINISTRATION CENTER  
ST. LOUIS, MISSOURI 63132

IN REPLY REFER TO

AGUZ-PAD-PA Rohe, John T.  
SSN 083-40-1028

27 MAR 1972

MEMORANDUM FOR RECORD

SUBJECT: AR 135-91 DELAY APPEAL BOARD RECORD OF PROCEEDINGS

1. Pursuant to letter, Headquarters, Department of the Army, RCPAC, dated 13 September 1971 subject: "AR 135-91 Delay Appeal Board," a board of officers was convened at 0900 hours 17 March 1972 at St. Louis, Missouri. The Board met to review and make recommendations on the delay appeal (paragraph 20c(2), AR 135-91) of PVT John T. Rohe, SSN 083-40-1028.

2. The following members of the Board were present:

JACKSON, ALAN T. SSN 545-42-6671, LTC, CE (President)  
TOOHEY, WILLIAM M. SSN 395-14-1032, MAJ, AGC (Recorder w/o vote)  
SMITH, ESTHER SSN 484-12-4543, GS-10  
HUTCHASON, THOMAS C. SSN 496-14-5302, GS-9

other

3. The ~~XXXXXX~~ members of the Board were absent with the concurrence of the President and convening authority:

4. The Board members were polled to determine if any member had prior knowledge of this case that would prejudice his ability to render a fair and impartial decision. This poll revealed that no member of the quorum had any prior knowledge of the case.

5. Findings: Having carefully considered the facts and documents submitted by PVT John T. Rohe, SSN 083-40-1028 incidental to his delay appeal application the Board finds:

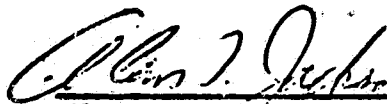
a. That the documentation submitted fails to qualify the applicant for mitigation or relief from his involuntary call to active duty.

b. A detailed analysis of this case reveals the administrative factors required to support an involuntary call to active duty for unsatisfactory participation have been consummated. This review included examination of the petitioner's Military Personnel Records Jacket (DA Form 201); his 22 September 1971 letter of appeal; and several forwarding command indorsements.

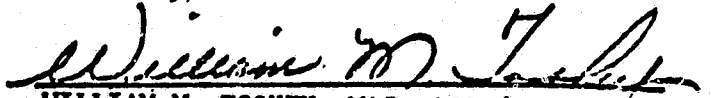
c. The petitioner's appeal is directed towards justifying why he knowingly and willfully violated specific guidance concerning his unsatisfactory attendance. His stated extenuation was viewed as unsupported and unacceptable grounds for favorable consideration by this Board.

6. Recommendation(s): In view of the above findings, the Board recommends disapproval of PVT Rohe's appeal of involuntary order to active duty.

7. The Board adjourned at 1000 hours 21 March 1972.



ALAN T. JACKSON, LTC, CE (President)



WILLIAM M. TOOHEY, MAJ, AGC (Recorder w/o vote)

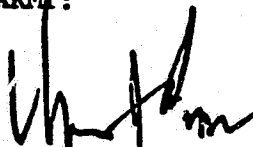
8. Dissenting Vote(s):

Mr. Hutchason registered a dissenting vote in that he believed PVT Rohe had established grounds for favorable consideration.

9. Action by Convening Authority:

The recommendation of the Board is approved.

BY ORDER OF THE SECRETARY OF THE ARMY:



LOUIS J. PROST  
Brigadier General, USA  
Commanding

DISTRIBUTION:

Original - MPRJ

Copy - OMPF

Copy - RCPAC, PAD



DEPARTMENT OF THE ARMY  
OFFICE OF THE ADJUTANT GENERAL

U. S. ARMY RESERVE COMPONENTS PERSONNEL AND ADMINISTRATION CENTER  
ST. LOUIS, MISSOURI 63132

A-119

IN REPLY REFER TO  
(630)

13 September 1971

SUBJECT: Involuntary Active Duty Appeal Board (AR 135-91)

TO: Individuals Concerned

1. The following personnel are appointed as members of the Department of the Army Involuntary Active Duty Appeal Board, Reserve Components Personnel and Administration Center, St. Louis, Missouri 63132. This board is established to determine findings and submit recommendations on denials of appeal of involuntary order to active duty submitted under the provisions of AR 135-91.

MEMBERS

JACKSON, ALAN T.	545 42 6671	LTC	CE
GRESSMAN, JAMES L.	208 26 4318	MAJ	AGC
LOONEY, DEANE H.	444 36 5355	MAJ	SC
TOOHEY, WILLIAM M.	395 14 1032	MAJ	AGC (Recorder w/o vote)
MEDINA, TOMAS	462 54 5412	CPT	AGC
CONLEY, JAMES D.	429 29 8100	GS 12	
JONES, AUGUST E.	494 12 1745	GS 12	
VITALE, WILLIAM	486 01 4710	GS 11	
WHITNEY, EARL J.	028 14 7789	GS 11	
O'CONNOR, PETER D.	487 26 4610	GS 10	
SMITH, ESTHER	484 12 4543	GS 10	
AUSTIN, ROBERT M.	243 10 6449	GS 9	
ELLIS, WATSON S.	283 22 8260	GS 9	
HUTCHASON, THOMAS C.	496 14 5302	GS 9	

2. A minimum of three appointed voting members, at least one of whom will be a commissioned officer, will constitute a quorum for the purpose of considering a particular case. The senior commissioned officer present will serve as voting Board President. The board will convene at the call of the President. Advisory members and the Recorder will serve without vote.

3. The purpose of the board is to examine all documentation submitted in support of an appeal of involuntary order to active duty. Upon completion of its deliberations, the board will report its findings and submit recommendations to the convening authority. Recommendations will be based on the vote by a majority of the members present. Minority recommendations will be forwarded to the appointing authority but will be separated from the majority recommendation.

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RCPD

13 September 1971

SUBJECT: Involuntary Active Duty Appeal Board (AR 135-91)

4. The board will be guided by the provisions of the current version of AR 135-91 and the instructions provided by the Recorder. Applicants or their representatives are not authorized personal appearance before this board.



ROGER M. LITTLE, II

LTC, INF

Director, RCPD

## DISTRIBUTION:

- 1 - each member
- 1 - Dir, RCPD
- 1 - Ch, PAD
- 10 - Ch, PAD-PA
- 1 - Ch, Bds Sec
- 1 - SJA

## EXTRACT COPY OF MORNING REPORT

A-121

For use of this form, see AR 630-10; the proponent agency is The Adjutant General's Office.

## SECTION I - IDENTIFICATION OF INDIVIDUAL CONCERNED

1. LAST NAME, FIRST NAME, MIDDLE INITIAL (Includes Sr, Jr, 2d, III, etc., as applicable)	2. GRADE	3. SOCIAL SECURITY ACCOUNT NO.
Rohe John T	PV2	083 40 1028

## SECTION II - EXTRACT COPY OF MORNING REPORT OF

4. REPORTING UNIT AS SHOWN ON MORNING REPORT	5. PARENT UNIT AS SHOWN ON MORNING REPORT
USARECSTA RECRUITS (WODJ 3A)	USARECSTA

6. DATE, NAME, SERVICE NUMBER, GRADE, REMARK, AND AUTHENTICATION EXTRACTED FROM MORNING REPORT

Period ending 2400 hrs 25Apr72

Rohe John T	E	083 40 1028	PV2	ACCESSIONS	
				OAD Nt Jd	LO D-02-042 HQ 1st USA Ft Meade
				PMOS 11H10	MD 17Apr72

T/J KEITH BOWN 1LT AGC  
ADMIN SVCS OFFICER

s/J KEITH BOWN

Period ending 2400 hrs 26Apr72

Rohe John T	E	083 40 1028	PV2	REDISTRIBUTION AWOL	
				Ch	AWOL 17Apr72
				Fr Intrns to Dprt 0001 hrs	

T/J KEITH BOWN 1LT AGC  
ADMIN SVCS OFFICER

s/J KEITH BOWN

Period ending 2400 hrs 16May72

Rohe John T	E	083 40 1028	PV2	DFR OF ORGANIZATION	
				DFR Dstr	3-4h AR630-10 16May72
				AWOL since 17Apr72	0001 hrs

T/DOMINIC R BONGIORNI CPT AG  
OIC PA

s/DOMINIC R BONGIORNI

## SECTION III - CERTIFICATION AND AUTHENTICATION OF EXTRACT

7. I CERTIFY THAT I AM (Check one)

☐ THE COMMANDING OFFICER ☒ THE PERSONNEL OFFICER OF THE ORGANIZATION RECORDED IN SECTION II

☐ AN ADJUTANT GENERAL IN THE OFFICE OF THE ADJUTANT GENERAL, UNITED STATES ARMY,

AND OFFICIAL CUSTODIAN OF THE MORNING REPORTS OF THE ORGANIZATION RECORDED IN SECTION II, AND THAT THE FOREGOING IS A TRUE AND COMPLETE COPY (Including Any Signature or Initials Appearing Thereon) OF THAT PART OF THE MORNING REPORT OF SAID ORGANIZATION SUBMITTED AT Fort Dix New Jersey 08640

FOR THE DATES INDICATED IN SAID COPY WHICH RELATES TO THE PERSON REFERRED TO IN EXTRACT COPY.

8. COMPLETE DESIGNATION OF ORGANIZATION AND STATION (mailing address) HAVING CUSTODY OF THE MORNING REPORT

HQ, USARECSTA, USAPERSCEM, Fort Dix, New Jersey 08640

9. DATE THIS EXTRACT PREPARED

17May72

10. TYPED NAME, GRADE, AND BRANCH OF SERVICE

DOMINIC R BONGIORNI CPT AG

11. SIGNATURE (Facsimile or Stamped Signature Not Acceptable)

*Dominic R. Bongiorini*

60

DEPARTMENT OF THE ARMY  
Headquarters, US Army Reception Station  
US Army Personnel Center  
Fort Dix, New Jersey 08640

AHBOPC-R

5 May 1972

Mr Thomas Rohe  
32-31 35 Street  
Astoria, New York 11106

Dear Mr Rohe:

It is with regret that we must inform you that your son, PVT John Thomas Rhoe has been absent without leave from the US Army Reception Station, US Army Personnel Center, Fort Dix, New Jersey 08640, since 17 April 1972.

His continued absence may result in conviction for desertion with resultant loss in pay and allowance, confinement, dismissal, and dishonorable or bad conduct discharge; that allotments and allowances may be discontinued; that dependents become ineligible for medical care, commissary privileges or other benefits if Private Rohe is dropped as a deserter.

If the whereabouts of Private Rohe are known to you, it is respectfully requested that he be advised of the serious consequence that may result from his continued absence. It is further requested that he be advised to report immediately to this station or to the nearest military installation. Such action on his part will constitute a return to active duty status.

Should further assistance be required, please call Area Code 609-562-3386.

Sincerely yours,

J KEITH BOWN  
1LT, AGC  
Admin Svcs Officer

61

DEPARTMENT OF THE ARMY  
Headquarters, US Army Reception Station  
US Army Personnel Center  
Fort Dix, New Jersey 08640

AHBOPC-R

17 May 1972

Mr Thomas Rohe  
32-31 35 Street  
Astoria, New York 11106

Dear Mr Rohe:

It is with regret that we must inform you that your son, PVT John Thomas Rohe has been absent without leave from the US Army Reception Station, US Army Personnel Center, Fort Dix, New Jersey 08640, since 17 April 1972, and has been dropped from the rolls of the Army as a deserter effective 16 May 1972.

If the whereabouts of Private Rohe are known to you, it is respectfully requested that he be advised of the serious consequence that may result from his continued absence. It is further requested that he be advised to report immediately to this station or to the nearest military installation. Such action on his part will constitute a return to active duty status.

Should further assistance be required, please call Area Code 609-562-3386.

Sincerely yours,

DOMINIC R BONGIORNI  
CPT, AGC  
OIC, PA

62



28 AUG

(Att. 1) PHOTOGRAPH IF AVAILABLE A-124

# DESERTER WANTED BY THE ARMED FORCES

For use of this form, see AR 190-9; the proponent agency is Office of The Provost Marshal General.

DATE PREPARED

## PART I

1. NAME OF DESERTER (Last name - First name - Middle name)						2. GRADE OR RATING		3. SEX	
4. RACE	5. CITIZENSHIP	6. DATE OF BIRTH	7. PLACE OF BIRTH		8. HEIGHT	9. WEIGHT	10. COLOR OF HAIR	11. COLOR OF EYES	
12. SERVICE AND SERVICE NUMBER		13. SOCIAL SECURITY ACCT NUMBER		14. DATE/HOUR OF ABSENCE		15. DATE DROPPED FROM ROLLS			
16. ORGANIZATION OR ACTIVITY AND PLACE FROM WHICH ABSENT (If AWOL/UA in transit, list old and new unit in item 25, REMARKS.)									
17. MEMBER'S PERMANENT RESIDENCE ADDRESS									
18. CIVILIAN OCCUPATION				19. CASE OF ESCAPED OR SENTENCED PRISONER <input type="checkbox"/> YES <input type="checkbox"/> NO			20. FINGERPRINTS AVAILABLE ON ENLISTMENT PAPERS <input type="checkbox"/> YES <input type="checkbox"/> NO		
21. MILITARY OCCUPATION				22. MARITAL STATUS <input type="checkbox"/> MARRIED <input type="checkbox"/> SINGLE <input type="checkbox"/> SEPARATED <input type="checkbox"/> DIVORCED			23. FINGERPRINT CLASSIFICATION		
24. NAME		25. ADDRESS							
NEAREST RELATIVE		26. DISTRIBUTION MADE BY USA							
OTHER RELATIVES		27. DATE							
		28. SIGNATURE							
		29. SIGNATURE							
		30. SIGNATURE							
		31. SIGNATURE							
		32. SIGNATURE							
		33. SIGNATURE							
		34. SIGNATURE							
		35. SIGNATURE							
		36. SIGNATURE							
		37. SIGNATURE							
		38. SIGNATURE							
		39. SIGNATURE							
		40. SIGNATURE							

29. REMARKS: a. List peculiar habits and traits of character, unusual mannerisms and speech; peculiarities in appearance, clothing worn, aliases; scars, tattoos, facial characteristics, complexion, posture/build, etc. b. Description of vehicle to which subject may have access, to include State vehicle license number, color, make, and model.

30. The individual described above has been designated a deserter and his return to military control is desired. If apprehended or detained by you, either deliver him to, or notify the nearest Army, Navy, Air Force, Marine Corps, or Coast Guard installation by the most rapid means available. For information concerning payment of reward or expenses, see the reverse of this form. Address communications to the Commanding Officer (never to a named individual) of the appropriate military installation.

31. STATION

32. TYPED NAME, GRADE, TITLE AND ORGANIZATION

33. SIGNATURE (All copies to be signed)

(Detached from DA Form 3545)

## PART II

30. NAME OF DESERTER (Last name - First name - Middle name)		
31. GRADE OR RATING	32. SERVICE NUMBER	33. SOCIAL SECURITY ACCOUNT NUMBER
34. DATE AND HOUR OF ABSENCE	35. DATE DROPPED FROM ROLLS	
36. ORGANIZATION OR ACTIVITY AND PLACE FROM WHICH ABSENT		
RETURN TO MILITARY CONTROL		
37. DATE OF RETURN	38. PLACE OF RETURN TO MILITARY CONTROL	
39. APPREHENDED BY <input type="checkbox"/> OR SURRENDERED TO <input type="checkbox"/>		
<input type="checkbox"/> MILITARY AUTHORITIES <input type="checkbox"/> CIVIL AUTHORITIES <input type="checkbox"/> FEDERAL BUREAU OF INVESTIGATION		
<input type="checkbox"/> OTHER (Specify)		
40. TYPED NAME, GRADE, TITLE AND ORGANIZATION		41. SIGNATURE

(Detached from DA Form 3545)

## INSTRUCTIONS

1. **AUTHORITY TO APPREHEND.** Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, possession, or the District of Columbia may summarily apprehend deserters from the armed forces of the United States and deliver them into custody of military officials of the United States. Civil authorities may apprehend absentees when requested to do so by military authorities. Receipt of DA Form 3545 or oral or written notification from military officials or Federal law enforcement officials that the person has been declared a deserter and that his return to military control is desired is authority for apprehension and will be considered as an offer of a reward.

## 49. INITIAL DISTRIBUTION

NO.  
COPIES

TO:

TPMG (ATTN: PMGP-N)

CG, ARMY (PM)

CG, ARMY (PM)

CG, ARMY (PM)

CG, MDW (PM)

CG, ARMY (Intel)

CG, (Attn: PM)

CG, (Attn: PM)

CG, FINANCE CENTER, U.S. ARMY

ATTN: FINCV-BA

Indianapolis, Indiana 46249

## ADDITIONAL DISTRIBUTION

2. **INDIVIDUAL CLAIMS HE IS NOT ABSENT WITHOUT LEAVE OR A DESERTER.** When a detained individual claims that he is not a deserter or absent without leave and does not have the papers to prove his claim, the apprehending person or agency representative should communicate direct, by the most rapid means available, to the OTPMG (Military Police Plans and Operations Division, Washington, D. C.) to ascertain the absentee's/deserter's correct status.

3. **PAYMENTS. a. REWARDS.** (No payment of a reward will be made unless the offer of a reward has been made.) Persons or agency representatives (except salaried officers or employees of the Federal Government or service members) apprehending or delivering absentees or deserters to military control will receive:

(1) Payment of a reward of \$15 for the apprehension and detention until military authorities take them under control, or

(2) Payment of a reward of \$25 for the apprehension and delivery of military control. Payment of reward will be made to the person or agency representative actually making arrest and the turnover or delivery to military control; if two or more persons join in performing these services, payment will be made to the one person or agency only. Payment of reward will be made whether the absentee surrenders or is apprehended. Payment will not be made merely for information leading to the apprehension of an absentee/deserter, nor for apprehension not followed by return to military control.

b. **REIMBURSEMENT.** Reimbursement, not to exceed \$25 may be made for actual expenses incurred in those cases in which no reward has been offered or when conditions for payment of reward cannot be otherwise met. Salaried officers or employees of the Federal Government, service members, attorneys on whose advice the absentee surrenders himself to military authorities, and other persons not entitled to receive a reward may be reimbursed in accordance with current regulations of the appropriate service. If two or more persons join in performing these services payment will be made jointly or severally, but total payment to all persons may not exceed \$25.

c. Both reward and reimbursement may not be paid for the same apprehension and detention or delivery.

d. Appropriate payment of a reward or reimbursement (but not both) will be made by the disbursing officer servicing the military facility to which the absentee is delivered and will be in full satisfaction of all expenses of apprehending, keeping and delivering the absentee/deserter.

DEPARTMENT OF THE ARMY  
Office of the Provost Marshal General  
ATTN: PMG-M  
Washington, D. C. 20314

① BROOKLYN AFPP. N.Y.

① - FT. DIX, N.Y.

64



DESETER CHECK LIST

DATE: 23 AUG 1972

A-127

NAME

ROHE, John T

SSAN:

083-40-1028

ORGANIZATION

USAREC PSTA

INSTALLATION

FT DIX

I - IN-PROCESSING

Following records and substantiating documents have been received in AGPERSCEN:

☒ DA Form 3545

☒ DA Form 188

☒ Service Record (DA 201 file) AUG 31

☐ OMPF Screened \_\_\_\_\_

(Date)

☐ OMPF document of later date than AWOL date:

☒ Remarks - Type of document, date, installation, etc:

☒ Copy of CO's inquiry

☒ Copy of letter to Next-of-Kin

☒ DD Forms 722 & 722-1

Name

RTT

NO OMPF - N/G

II - VERIFICATION

ACTION TAKEN: (In detail, attach letter if appropriate)

Name \_\_\_\_\_

Date \_\_\_\_\_

III - DISTRIBUTION (DA FORM 3545)

☐ AMENDED

☒ ADDED

W066530730

Initials

RLP

Date

24 AUG 72

IV - NCIC ACTION

1. Log in 720802501

2. NCIC Entry completed

3. Distribution made

4. Logged out

Initials

B

Date

AUG 26 1972

Initials

SLT

Date

26 AUG 72

Initials

JP

Date

27 AUG 72

Initials

WET

Date

AUG 28 1972

V - KEY PUNCH

<input type="checkbox"/> PZ (3545 & 188)	Init _____ Date _____	<input type="checkbox"/> GZ (Fwd 201 w/AG85)	Init _____ Date _____
<input type="checkbox"/> PB (Potential)	Init _____ Date _____	<input type="checkbox"/> GA (Receipt of Return Notice)	Init _____ Date _____
<input checked="" type="checkbox"/> PA (Receipt 201)	Init _____ Date _____	<input type="checkbox"/> PD (Erroneous DFR)	Init _____ Date _____

S. Beck AUG 24 1972

VI - FILE (A&D ALPHA FILE)

Initials \_\_\_\_\_ Date \_\_\_\_\_

VII - REMARKS

Initials \_\_\_\_\_ Date \_\_\_\_\_

VIII - RETURN TO MILITARY CONTROL

1. Receipt of Part II, DA Form 3545. Date \_\_\_\_\_
2. Forward to NCIC. Date \_\_\_\_\_
3. NCIC ACTION:
  - a. Log in Date \_\_\_\_\_ Initials \_\_\_\_\_
  - b. NCIC Action completed Initials \_\_\_\_\_
  - c. Distribution made Initials \_\_\_\_\_
  - d. Logged out Date \_\_\_\_\_ Initials \_\_\_\_\_
4. KEY PUNCH:
 

☐ GA

IX - REQUEST FOR FIELD 201 FILE

- ☐ Prepare AGPERSCEN Form 85 and attach. Initials \_\_\_\_\_ Date \_\_\_\_\_

ADDITIONS TO MILITARY FILE OF JOHN T. ROHE,  
NOT INITIALLY FILED WITH DISTRICT COURT

[Pages A-130 through A-141 following]

# United States of America



## DEPARTMENT THE ARMY

Albany, New York

PLACE

26 June 1973

DATE

I HEREBY CERTIFY I am the custodian of the military personnel records of Private John T. Rohe, 083-40-1028, a former member of the New York Army National Guard and that the following documents are official records from his file:

1. PS Form 3811, RECORD for item Registered No "87599" with delivery date "4/3/72" and signature: "John T. Rohe."

2. Copy of letter dated 31 March 1972, office reference MNPA-MP(E), Private John T. Rohe, noted: "#87599", with an inclosure: Headquarters First United States Army Letter Orders D-02-042, dated 11 February 1972.

*James J. Kenney*  
JAMES J. KENNEY  
LTC, SS, NYARNG

Assistant Adjutant General

I HEREBY CERTIFY that JAMES J. KENNEY, SS, NYARNG, who signed the foregoing certificate, is Assistant Adjutant General, New York Army National Guard, Albany, New York, and that full faith and credit should be given to his certification.

IN TESTIMONY WHEREOF, HOWARD H. CALLAWAY

Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this 29th day of June, 1973.

*Howard H. Callaway*  
Secretary of the Army.

By *John B. Carroll*  
Administrative Assistant.

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)  
(Additional charges required for these services)☒ Show to whom, date and address  
where delivered☒ Deliver ONLY  
to addressee

## RECEIPT

Received the numbered article described below

REGISTERED NO.

87599

CERTIFIED NO.

INSURED NO.

DATE DELIVERED

4/3/72

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)



RMPA-PP(3)

31 March 1972

Private John T. Rohs  
38-31 35th Street  
Astoria, New York 11106

Dear Private Rohs:

This office has been advised that your appeal of Involuntary Order to Active Duty has been disapproved by the Department of the Army.

In this respect your attention is invited to the attached First United States Army Letter Order E-04-012, which requires that you report to the United States Army Reception Station, Fort Dix, New Jersey, on 17 April 1972.

Sincerely,

1 Incl  
as  
RAS/b

JAMES J. KENNEY  
LTC, SS, FIDELITY  
Assistant Adjutant General

F1 87549

HEADQUARTERS, FIRST UNITED STATES ARMY  
FORT GEORGE G. MEADE, MARYLAND 20707

AMAG-CA  
LETTER ORDERS D- 02-042

11 February 1972

SUBJECT: Amendment of Active Duty Orders

Individual Concerned

1. TO L69. Following orders are changed as indicated.

Action: Amended


So much of: LO D-01-006 this headquarters dated 5 January 1972

Pertaining to: John T. Roche 083-40-1028 PW2 11B10 for duty in 11B10  
32-31 35th Street Co B, 1st Bn, 71st Inf, State of NY, Bldg 22,  
Astoria, New York State Campus, Albany, New York 12226  
11106 UIC: F36BOG

As reads: Reporting Date: 17 February 1972

Now changed: Reporting Date: 17 April 1972

FOR THE COMMANDER:

  
ALAN L. ATTERBURY  
1LT, AGC  
Asst AG

DISTRIBUTION:

- 10 - Individual
- 20 - AMAG-CA
- 1 - AMAG-MR
- 5 - CO, USA Reception Station, Fort Dix, New Jersey 08640
- 5 - CC, 15th AG Co Admin., Fort Hood, Texas 76551
- 5 - CC, Co B, 1st Bn, 71st Inf, State of NY, Bldg 22, State Campus, Albany, NY 12226
- 5 - C/S, State of NY, Div of Mil & Nav Affairs, Sub Secy Bldg 22, State Campus, Albany, New York 12226

SPECIAL DISTRIBUTION:

- 5 - CC, US Army Personnel & Sup Com, WIA- 1001, Ft Benjamin Harrison, Indiana 46219

# United States of America



## DEPARTMENT OF THE ARMY

WASHINGTON, D. C.

PLACE

28 Nov 73

DATE

I HEREBY CERTIFY that the attached are true and exact copies of documents in the official records of John T. Carne, 083-40-1028, the originals of which are in my custody temporarily in my capacity as Chief, Litigation Division, Office of The Judge Advocate General, Department of the Army.

*William B. Carne*

WILLIAM B. CARNE  
Colonel, JAGC  
Chief, Litigation Division

I HEREBY CERTIFY that Colonel William B. Carne, JAGC, who signed the foregoing certificate, is Chief, Litigation Division, Office of The Judge Advocate General, Department of the Army, Washington, D. C., and that full faith and credit should be given to his certification.

IN TESTIMONY WHEREOF I, HOWARD H. CALLAWAY,

Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this 28th day of November, 1973.

*Howard H. Callaway*

Secretary of the Army.

By *John M. Connelley*  
Administrative Assistant.

MSPA-MP 201 ROHE, John T.  
083-40-1028 UNIT: Co B 71st Inf.  
SUBJECT: Appeal of Involuntary Order to Active Duty

26 September 1971


Commanding General  
42d Infantry Division, NYARNG  
125 W 14th Street  
New York, New York 10011

1. Forwarded inviting your attention to the attached letter from PV2 E2 John T. Rohe, 083-40-1028, Company B 71st Inf., NYARNG, appealing his involuntary order to active duty.

2. Subject EM has been apprised of this referral, Incl. #2.

FOR THE COMMANDER:

2 Incl  
1-Ltr EM w/2 Incl, 22Sep71  
2-cc: Ltr DMNA, to EM, 28Sep71  
RAF/t

  
OWEN P. GRUCAN  
LTC, GS. NYARNG  
Assistant Adjutant General

2  
(P1)

REGIST  
8  
CERTIF  
INSUR  
DATE  
7



STATE OF NEW YORK  
DIVISION OF MILITARY AND NAVAL AFFAIRS  
PUBLIC SECURITY BUILDING  
STATE CAMPUS  
ALBANY, NEW YORK 12226

MAJOR GENERAL J. C. BAKER  
CHIEF OF STAFF TO THE GOVERNOR

MNPA-MP 201 1000, John T.

043-41-1073

15 September 1971

SUBJECT: Request for Active Duty Orders UP AR 135-91

PV2 John T. Baka  
32-31 34th Street  
Astoria, New York 11106

1. This office has been requested to order you to active duty for 24 months, less any active duty or active duty for training time previously served, for unsatisfactory participation in accordance with the provisions of Army Regulation No. 135-91.
2. Documentation presented by your unit commander is complete and this office has requested assignment instructions from Department of the Army this date. Active duty orders will be issued in approximately 30 days.
3. In the event you wish to appeal your order to active duty by requesting a delay or relief from call to active duty, you must, within 15 days of receipt of this letter, present a written request for such delay or relief with supporting documentation through your unit commander. Requests for a delay in reporting for active duty after orders are issued will be considered. Include illness and injury.

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)  
(Additional charges required for these services)

☐ Show to whom, date and address  
where delivered

☒ Deliver ONLY  
to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO. 87461	SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) <i>[Signature]</i>
CERTIFIED NO.	SIGNATURE OF ADDRESSEE'S AGENT, IF ANY <i>[Signature]</i>
INSURED NO.	
DATE DELIVERED 9/18/71	SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

or appeal of order to  
20, respectively, of Army  
available at your National  
technician can explain the  
tion. A copy of this letter  
for his information.

P.2

1/nc2#21

knowledge there has been no significant change in your physical condition. If you are found to be physically disqualified, you will be discharged at the Reception Center.

FOR THE CHIEF OF STAFF TO THE GOVERNOR:

cc: Unit Co Co E 1st Pz  
Area Comd. 71st Infantry  
JJK/t

JAMES J. KENNEY  
LTC, SS, NYARNG  
Assistant Adjutant General

(P3)

16 Jul 71.

Capt Solomo and 1st. Dist.

Subject: PVS John T. Roke

Activation as per plan

Conversation 16 Jul 71.

There is no doubt that  
this EM did not follow  
proper procedure in  
relation to his T/AT.

"No transportation" is an  
open and acknowledged  
issue.

It is the opinion  
of the I G office, however,  
that this man due to  
his experience in  
the 30 Pct on the  
N.Y. P.D., and with  
the Guard will be  
greater use to the 42 Div  
than he would if  
activation is initiated.

This is especially true for the 33  
next 3 months. (P.4)

It is for this reason we  
suggest he be rescheduled

for A.T. from the 24 Jul 71 -  
7 Aug 71.

Please advise us of your  
decision.

J. Bruchan f.  
Asst I.C. 42 INF Div  
11



**POLICE DEPARTMENT**  
CITY OF NEW YORK

COMMANDING OFFICER

\_\_\_\_\_  
PRECINCT

IS ORDERED TO REPORT FOR DUTY AT

HOOR	DAY	MONTH	YEAR
A. M. P. M.			19

*pt. John Roche was  
disabled and confined  
to home for medical  
reasons 6/26-6/27*

*James J. [Signature]*

SURGEON DISTRICT

24. 12

*Que 13*

SUBJECT: Patrolman John T. Rohe Serial #6591 30

CHIEF SURGEON MEDICAL UNIT NYPD  
NYC POLICE ACADEMY  
235 West 20th Street  
New York, NY

1. This Unit request some information from you concerning Patrolman John T. Rohe who reportedly went on sick report 26 Jun 71. We request the following information from you:

a. A signed statement from Sergeant Pollack of the Police Department Medical Unit, clarifying his part in ordering Patrolman Rohe to remain at his residence. It should be indicated if this was at the direction of the district police surgeon, as an authorized action by Sergeant Pollack as a routine requirement in Police Department Rules, or as a result of action on the part of Patrolman Rohe.

b. A signed statement from the appropriate district police surgeon indicating the date on which Patrolman Rohe went on sick report prior to Summer Camp AT-71, which began 26 Jun 71. Also please inform us if the district police surgeon received a phone call from Patrolman Rohe, the date of the phone call and what the doctor instructed Patrolman Rohe to do.

c. A statement from Patrolman Brisa of the NYPD Medical Unit on the circumstances of what was said between him and Patrolman Rohe on the evening of 25/26 Jun 71.

2. The above information requested would aid me in answering certain questions pertaining to Patrolman Rohe from James J. Kenney, LTC., SS, NYARNG Assistant Adjutant General, Headquarters New York Army National Guard, Public Security Building, State Campus, Albany, NY 12226.

3. I would appreciate it if this matter was expedited as soon as possible.

JOHN A. DITULLIO  
CPT INF NYARNG  
Commanding

INCL #1/2

P.7

1 Copies Received

Date February 11, 1974

Firm Hon. Edward John Boyd, II

By Kelvin Khorseth